



**EX PARTE FILING**

**Submitted September 18, 2003**

**Being resubmitted October 8, 2003 to include consecutive page  
numbering at the request of Staff**

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, August 11, 2003 5:54 PM  
**To:** 'Jodi Smith'  
**Cc:** Oxley, J. Jeffery  
**Subject:** FW: AZ 271 comments/DS1 capable loop issue/CABs

Jodi:

I got your voice mail. Jeff Oxley and I would be happy to talk with you. Is there a time that would be most convenient for you? (Would 11:30 CST/12:30 eastern work?) As background, copied below are the comments Eschelon filed recently in AZ on the Staff's non-OSS report. (With respect to the OSS issues, Qwest has finally finalized OP-5, but PO-20 has a long ways to go.)

As you may know, other CLECs have also filed comments about the DS1 capable loop problem that is discussed in our AZ 271 comments. In June, 2003 (and since then), Eschelon and other CLECs noticed a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (*i.e.*, held orders) in Arizona and other states. Eschelon and other CLECs asked Qwest about the cause of this increase. Qwest has provided conflicting information, but has said generally that the increase in jeopardy notices relates to a recent unilateral decision by Qwest to interpret "special construction" in a new manner (different from how Qwest described it to the FCC previously). In paragraph 164 of the FCC's 9-state Qwest 271 Order (12/20/02), the FCC said: "The record shows that Qwest attempts to locate compatible facilities for competing LECs" and "performs incremental facility work to make UNEs available." In contrast, Qwest is now claiming that such activities (including loop conditioning) are "special construction," so that orders are halted until a lengthy, complicated request process, with high charges, is completed.

In a recent CMP notice, Qwest states that, in response to CLEC objections, it may temporarily "suspend" some changes pending further discussion (though it can still implement them unilaterally later). (If Qwest just pushes the change out until after it gets 271 approval, CLECs will still be faced with this problem, but Qwest will be in the interLATA market in AZ.) In the CMP notice Qwest states that -- even if it suspends some changes -- it will still require use of the special construction process in the meantime in some instance. For example, Qwest will require use of the special construction process for removal of 4 or more load coils in the meantime. (It appears that Qwest may be suggesting that 3 or fewer load coils is under 18,000 feet, and 4 or more is over 18,000 feet.) In the Arizona June 12, 2002 cost case order, the Commission states: "Staff witness Dunkel agreed with Sprint that Qwest's proposed conditioning charges are excessive. Mr. Dunkel stated that it is not efficient for Qwest to send a person out to unload a single loop at a time. Mr. Dunkel proposed a rate of \$40 per loop to remove load coils or bridge taps under 18,000 feet; \$70 per location for aerial and buried loops over 18,000 feet; and \$400 per location for underground loops. For loops over 18,000 feet, Mr. Dunkel would also impose a \$2 charge for each additional coil or tap at the same time, location, and cable (Staff Ex. 30, at 51-52; Sched. WD-8). . . . We believe Staff's proposal fairly recognizes the costs incurred by Qwest and we, therefore, adopt Staff's

position on this issue."

This shows the AZ commission established rates for conditioning for both loops under 18,000 feet and loops over 18,000 feet. Therefore, Qwest's attempt to say that removing load coils for 3 or fewer load coils (in the long term) and 4 or more load coils (even in the short term) is "special construction" is contrary to the AZ cost case order. The cost case order set an NRC charge; it did not say special construction charges/ICB rates apply.

If you haven't already done so, you may want to talk with MTI about the DS1 issue. MTI also filed comments on the DS1 issue in AZ (and discussed how what Qwest is saying now is different from what it said to the FCC). I'll forward that information separately.

Also copied below is a complaint that Eschelon has filed in federal court relating to missing records/access charges in AZ and other states. This remains a problem.

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ESCHELON TELECOM OF WASHINGTON, INC.;	)	No. C03-1296R
ESCHELON TELECOM OF ARIZONA, INC.;	)	
ESCHELON TELECOM OF COLORADO, INC.;	)	COMPLAINT
ESCHELON TELECOM OF MINNESOTA, INC.;	)	
ESCHELON TELECOM OF OREGON, INC.;	)	
and	)	
ESCHELON TELECOM OF UTAH, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
QWEST CORPORATION,	)	
	)	
Defendant.	)	

**JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. § 1332. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between citizens of different states. Eschelon Telecom of Washington, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Arizona, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Colorado, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Minnesota, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Oregon, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Utah, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Qwest Corporation (“Qwest”) is incorporated in Delaware and has its principal place of business in Colorado.

2. This Court also has jurisdiction under 28 U.S.C. § 1331. The claims stated herein arise under the laws of the United States, specifically, the Telecommunications Act of 1996, codified in various sections commencing at 47 U.S.C. § 151, *et seq.*

3. The Western District of Washington at Seattle is the proper venue under 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to the claim occurred in King County, and Qwest is subject to personal jurisdiction in King County.

**PARTIES**

4. Plaintiffs (collectively, “Eschelon”) are competitive local exchange carriers (“CLECs”) that

provide local exchange telephone service. Eschelon serves markets in Qwest's territory in Seattle-Tacoma, Washington; Phoenix, Arizona; Denver-Boulder, Colorado; Minneapolis-St. Paul, Minnesota; Portland-Salem-Eugene, Oregon; and Salt Lake City, Utah. Eschelon is the successor to American Telephone Technology, Inc., Electro-Tel, Inc., Cady Telemanagement, Inc., and Advanced Telecommunications, Inc. Eschelon provides local exchange telephone service to customers in two primary ways: through Eschelon's telephone network, and through a telephone network owned by an incumbent local exchange carrier (e.g., Qwest), to which Eschelon has or its predecessors had access pursuant to interconnection agreements as required by 47 U.S.C. §§ 251-252. Eschelon has satisfied all prerequisites necessary to bring this action.

5. Qwest is an incumbant local exchange carrier ("ILEC") that, in pertinent part, provides services, equipment, facilities, and network elements to Eschelon and other CLECs pursuant to interconnection agreements, as required by 47 U.S.C. §§ 251-252. Qwest merged with, and is the successor to, U S West, Inc., the parent company of U S West Communications, Inc. ("U S West"). Qwest is liable for the contracts that U S West entered into with Eschelon or Eschelon's predecessors, as described below.

### **FACTS**

#### **The Parties' Interconnection Agreements**

6. In 1999 and 2000, Qwest's and Eschelon's predecessors arbitrated, negotiated or opted into interconnection agreements for every state in which they both do business, namely, Washington, Arizona, Colorado, Minnesota, Oregon, and Utah. These agreements established rates, terms, and conditions for the interconnection of Eschelon's and Qwest's telecommunications networks, as well as for the provision of certain services by Qwest to Eschelon.

7. For Washington, the interconnection agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Arizona, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Colorado, the agreement is the "Interconnection Agreement" between U S West and Electro-Tel, Inc. For Minnesota, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and Cady Telemanagement, Inc. For Oregon, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Utah, the agreement is "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and Advanced Telecommunications, Inc. The foregoing contracts are collectively referred to herein as the "Interconnection Agreements."

8. On November 15, 2000, Qwest and Eschelon executed an "Interconnection Agreement Amendment Terms" ("Interconnection Agreement Amendment") that amended the terms of the Interconnection Agreements.

#### **Carrier Access Billing System**

9. Qwest and Eschelon own and operate digital loop carrier facilities and voice switching facilities in the geographic areas in which they do business. As the incumbent local exchange carrier, Qwest is required by federal law to permit Eschelon and other local exchange carriers to interconnect with Qwest's network. Pursuant to the Interconnection Agreements, as amended, Eschelon leases Qwest's distribution and transport network to link Eschelon's customers to Eschelon's switches in order to provide them with telecommunications services. In addition, Eschelon leases combinations of Qwest's distribution plant and Qwest's switching facilities to serve the portion of Eschelon's customers that are not served by Eschelon's switches.

10. Under federal law, local exchange carriers, such as Eschelon, are to be compensated for the cost of transporting and terminating telephone calls that are originated or terminated from or to their customers by customers of other telecommunications carriers. If a caller in New York calls an Eschelon customer in Washington, for example, Eschelon is entitled to collect an access charge from the caller's long distance carrier. Similarly, if an Eschelon customer in Washington calls someone in New York, Eschelon is also entitled to collect an access charge from its customer's long distance carrier.

11. Qwest is one of several long distance carriers from which Eschelon is entitled to collect access charges. Long distance carriers route calls to, and receive calls from, either designated Qwest end office switches (dedicated end office transport), or from access tandems in every geographic area in which Eschelon conducts business. In order to collect access charges, Eschelon must be able to provide long distance carriers with call records of long distance calls, formatted according to industry standards. These

records are produced by Eschelon's switches in some instances, and by Qwest's access tandem or local switches or end office switches in others.

12. In the industry, the process by which long distance calls generate records – which are used to collect access charges from long distance carriers – is known as the Carrier Access Billing System (“CABS”). Eschelon's switches generate CABS records for long distance calls *originated* by Eschelon's customers who are served by Eschelon's switches (on-net customers). However, Eschelon must rely on Qwest to provide CABS records of long distance calls *received* by customers who are served by Eschelon's switches (on-net customers), as well as for all long distance calls *made or received* by Eschelon's customers who are served by Qwest's switches using unbundled network element combinations (off-net customers).

13. The underlying Interconnection Agreements for each state (*e.g.*, Section 7 of Attachment 7 of the Interconnection Agreement for Minnesota) and Section 3.3 of the Interconnection Agreement Amendment, require Qwest to provide complete and accurate CABS records for Eschelon's on-net and off-net customers on a daily basis so that Eschelon can bill interexchange or other companies for access charges. Therefore, Qwest is obligated to provide Eschelon with complete and accurate CABS records so that Eschelon can collect the access charges it is entitled to from long distance carriers, including Qwest, for long distance calls pursuant to the Interconnection Agreements and federal law.

14. Qwest has provided Eschelon with some CABS records, but Eschelon has discovered that Qwest has not provided all of the CABS records for Eschelon's on-net and off-net customers. In 2001 and 2002, Eschelon engaged third-party telecommunications consultants to audit the completeness and accuracy of the CABS records provided to Eschelon by Qwest. The audits included test calls to Eschelon customers and test calls from Eschelon customers. In addition, Qwest conducted an audit of its CABS records in cooperation with Eschelon. Based upon the most recent audit, Eschelon found that Qwest's CABS records failed to capture approximately 16% of the total call records for which Eschelon would have been entitled to collect access charges. In addition, Eschelon found that Qwest has not provided complete and accurate CABS records for Qwest-carried long distance toll calls that terminated on Eschelon's on-net lines, an omission that financially benefits Qwest to Eschelon's detriment.

15. Qwest is liable for incidental and consequential damages under the Interconnection Agreements for breaches that are repeated or are found to be a pattern of conduct. Qwest has continually failed to provide Eschelon with complete and accurate CABS records, even after Eschelon raised the issue with Qwest. Qwest's failure to provide Eschelon with complete and accurate CABS records deprives Eschelon of substantial compensation to which Eschelon is entitled. As a result, Eschelon has been unable to bill for and collect approximately \$77,500 per month in access charges, for a total of approximately \$1.2 million from March 2002 through May 2003. The Interconnection Agreements (*e.g.*, Section 4 of Part A of the Interconnection Agreement for Minnesota, and Sections 17-18 of Attachment 7) also require Qwest to pay for Eschelon's audit costs. Eschelon has incurred approximately \$288,000 in auditing costs for the most recent CABS auditing projects. Qwest has refused to pay such costs.

#### Automated Conversion of Eschelon's Resale Customer Base to UNE-E

16. Eschelon has been a wholesale customer of Qwest and its predecessors since 1996. Initially, Eschelon purchased some of Qwest's services under the “Resale” provisions of the Interconnection Agreements. The Interconnection Agreements and federal law also allow Eschelon to provide telecommunications service to its customers through Qwest's unbundled network elements (“UNEs”). UNEs are parts of an ILEC's (*e.g.*, Qwest's) network, such as the loop, switching, and transport functions. Pursuant to 47 U.S.C. § 251(c)(3), ILECs are required to offer UNEs for lease to CLECs. UNEs enable a CLEC to provide telecommunications service to customers who are not served directly by the CLEC's switch and telephone lines.

17. In 2000, Eschelon had a contractual right to convert its base of 49,000 resale lines to a Qwest product known as unbundled network element platform (“UNE-P”), as well as to order UNE-P for new lines. However, Qwest was not prepared to provide Eschelon with the prices, services and quality that Eschelon was entitled to under the UNE-P platform. Instead, Qwest offered to provide the prices, services and quality that Eschelon wanted through a new product (later called UNE-Eschelon or “UNE-E”).

18. During the negotiations regarding UNE-E, Eschelon questioned how Qwest intended to convert Eschelon's 49,000 resale lines to UNE-E without disruption in service or functionality. Qwest responded that it could perform an automated (as opposed to manual) conversion process, but Eschelon would have to pay for Qwest to do so. Eschelon agreed. Pursuant to Paragraph 2.1 of the Interconnection

Agreement Amendment, Qwest promised to convert Eschelon's base of resale customers to the UNE-E platform and release Eschelon from any termination liability in exchange for Eschelon's payment to Qwest of \$10 million. Of the \$10 million, Eschelon paid \$4 million for Qwest to automatically convert Eschelon's resale customers to the UNE-E platform and avoid the service disruptions and errors that a manual conversion would cause.

19. In addition to Qwest's promise to prevent service disruptions during the conversion itself, Qwest promised that the conversion would result in accurate bills, so that the bills would no longer reflect the wholesale discount associated with resale service, and would instead show the UNE-E rates in the Interconnection Agreement Amendment. Thus, Qwest was obligated to provide Eschelon with an automated conversion to a working UNE-E product.

20. Despite Qwest's promises to the contrary, Qwest never converted (automatically or otherwise) Eschelon's resale base to an accurately billed UNE-E product. To date, Eschelon has not obtained any benefit from the \$4 million it paid Qwest.

#### Commercially Viable DSL Service

21. CLECs typically provide their customers with high-speed Internet access through digital subscriber lines ("DSL"). Under Section 2.2 of the Interconnection Agreement Amendment, Qwest agreed to make DSL service available to Eschelon's customers through the UNE-E platform, beginning November 15, 2000. After the amendment was signed, Eschelon discovered that Qwest did not have a process in place to provide commercially viable DSL service. As a result, Eschelon was not able to offer or provide its customers with Qwest DSL service until August 2001, despite Qwest's commitment to provide Eschelon with DSL service as of November 15, 2000.

22. Given that numerous Eschelon customers had ordered DSL service from Eschelon, and Qwest was unable to fulfill the orders, Eschelon was required to purchase DSL service from another supplier at substantially higher prices. As a result of Qwest's breach, Eschelon's costs to provide its customers with DSL service was approximately \$1.7 million higher than the costs Eschelon would have incurred otherwise.

#### **FIRST CAUSE OF ACTION – BREACH OF CONTRACT (CABS)**

23. Eschelon re-alleges the allegations contained above.

24. Qwest contracted with Eschelon and promised, for valuable consideration, to provide complete and accurate CABS records for long distance calls to and from Eschelon's customers for Eschelon's use in billing long distance carriers for access charges. Eschelon performed its obligations in all material respects. Qwest has engaged in a pattern of conduct that has repeatedly breached the contract by failing to provide Eschelon with the data necessary to bill for such calls. As a proximate result, Eschelon has suffered damages (including incidental damages, consequential damages, and audit costs) in an amount to be proven at trial (but no less than \$1.2 million, from March 2002 through May 2003, plus the \$288,000 in unpaid auditing costs that Eschelon incurred to confirm Qwest's breaches).

#### **SECOND CAUSE OF ACTION – BREACH OF CONTRACT (UNE-E)**

25. Eschelon re-alleges the allegations contained above.

26. Qwest contracted with Eschelon, and Eschelon paid Qwest consideration of \$4 million, to automatically convert Eschelon's base of 49,000 resale lines to the UNE-E platform without disruption in service or functionality. Eschelon performed its obligations under the contract in all material respects. Qwest has engaged in a pattern of conduct that repeatedly has breached the contract by failing to provide the automated process, failing to convert Eschelon's resale customer base to the UNE-E platform, and failing to accurately bill Eschelon for UNE-E services. As a proximate result, Eschelon has not obtained the benefit of its bargain and has suffered damages (including incidental and consequential damages) in an amount to be proven at trial (but no less than the \$4 million consideration Eschelon paid Qwest to perform the automatic conversion).

#### **THIRD CAUSE OF ACTION – BREACH OF CONTRACT (DSL)**

27. Eschelon re-alleges the allegations contained above.

31. Qwest contracted with Eschelon, for valuable consideration, to make DSL service available for Eschelon to sell to its customers. Eschelon performed its obligations in all material respects. Qwest engaged in a pattern of conduct that repeatedly breached the contract by failing to provide the promised service. As a proximate result, Eschelon has suffered damages (including incidental and consequential damages) in an amount to be proven at trial but no less than the \$1.7 million in additional costs that Eschelon has incurred to obtain DSL service from a third party).

**PRAYER FOR RELIEF**

WHEREFORE, Eschelon prays for the following relief:

1. For actual, incidental, special, and consequential damages (in an amount to be proven at trial, but for purposes of this pleading, no less than \$7,188,000);
2. For prejudgment interest;
3. For all other such relief as the Court deems proper.

DATED this 16<sup>th</sup> day of June, 2003.

GRAHAM & DUNN PC

By \_\_\_\_\_

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WSBA# 2272

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Attorneys for Plaintiffs



271 Comments and Reply Comments:

-----Original Message-----

**From:** Wagner, Kim K.  
**Sent:** Friday, July 25, 2003 4:57 PM  
**To:** acrain@qwest.com; adubuqu@qwest.com; aisar@millerisar.com;  
andrea.harris@allegiancetelecom.com; baschneider@z-tel.com;  
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**Cc:** Clauson, Karen L.  
**Subject:** AZ Docket T-00000A-97-0238 / Reply Comments

Attached are Eschelon's Reply Comments in this docket.

Some of the documents are TIF files. After opening them, just click the arrow on the tool bar to see the subsequent pages.

**Service Letter**

July 26, 2003

RE: In the Matter of US West Communications, Inc.'s Compliance With  
Section 271 of the Telecommunications Act of 1996  
Docket Nos. T-00000A-97-0238

Dear Parties of Record:

Enclosed and served upon you is a copy of Eschelon's Reply Comments Regarding Staff Second Report, with Exhibits E-DD through E-NN in connection with the above-referenced matter.

Sincerely,

Kim K. Wagner  
Senior Legal Secretary  
Eschelon Telecom, Inc.  
612.436.6225

Enclosure

## **Reply Comments**

### **BEFORE THE ARIZONA CORPORATION COMMISSION**

MARC SPITZER

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

**Docket No. T-00000A-97-0238**

### **ESCHELON'S REPLY COMMENTS REGARDING STAFF SECOND REPORT**

Pursuant to the Procedural Order dated July 9, 2003 in this matter, Eschelon Telecom, Inc. ("Eschelon") submits these Reply Comments regarding the Final Report and Recommendation on Checklist Items 1 and 2 ("Second Report") arising from the July 30-31, 2002 Workshop ("Workshop") by the Arizona Corporation Commission ("Commission" or "ACC") Utilities Division Staff ("Staff"). Eschelon replies to the Comments of Qwest Corporation's ("Qwest") Regarding Staff's Report and Recommendation on July 30-31 Supplemental Workshop dated July 18, 2003 ("Qwest's Comments").

#### **I. DISCUSSION**

##### **A. AIN AND VOICE MAIL WITH UNE-P**

Based on the facts presented, Staff agreed with Eschelon's position that certain Advanced Intelligent Network ("AIN") features and voice mail (Voice Messaging Service, or "VMS") should be made available with UNE-P. *See* Second Report, p. 10, ¶¶ 40-42. Qwest has stated that it will comply with the Staff's recommendation to provide those AIN features and voice mail with UNE-P. *See* Qwest's Comments, pp. 4-5 (AIN) and 12-13 (voice mail). As indicated in Eschelon's July 18, 2003 Comments in

this matter (“Eschelon’s Comments,” p. 11), this is an important issue. Staff and the Commission have advanced competition in Arizona with this result.

Two sub-issues remain with respect to the availability of certain AIN features and voice mail with UNE-P: (1) CLEC facing documentation regarding feature availability; and (2) timing of implementation. With respect to the first issue, Eschelon has asked the Commission to require Qwest to post a complete “Features, Products & Services Unavailable with UNE-P Products” (with USOCs and language description) document, as modified to reflect the availability of AIN features and voice mail with UNE-P,<sup>1</sup> in a logical and readily accessible location on Qwest’s web site. Eschelon addressed this issue in its earlier Comments (pp. 11-14) and will not repeat that information here.

With respect to the second issue, the Commission should address the timing of implementation of the availability of AIN features and voice mail with UNE-P. The Staff found that Qwest currently has an obligation to provide AIN features to CLECs and that not to do so would be discriminatory. *See* Second Report, p. 10, ¶¶ 40-42. Staff also found that, because Qwest has committed to provide voice mail with UNE-P in Minnesota, “Qwest should also be required to make this feature available to CLECs in Arizona which desire this feature with UNE-P.” *Id.* p. 10, ¶ 41. Qwest has announced that it will provide voice mail with UNE-P in Minnesota effective today, July 25, 2003. *See* Ex. E-DD<sup>2</sup> (Qwest CMP notice PCAT\_VMSwUNE-P\_v1).

The Staff’s recommendations address a current discriminatory situation. In Qwest’s Comments, however, Qwest states that it will provide these features with UNE-P “after” the effective date of the FCC order approving Qwest’s Section 271 application for the state of Arizona. *See* Qwest’s Comments, p. 5 (AIN) & p. 12 (voice mail). Qwest does not commit to any deadline as to how long after the FCC’s Order before it will do so. There is no reason for delay. Qwest is already providing AIN features on a platform basis to some carriers,<sup>3</sup> and Qwest is already obligated to provide voice mail with UNE-P in Minnesota as

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<sup>1</sup> As indicated in footnote 21 in Eschelon’s Comments: “Although the documentation needs updating, availability of the features themselves need *not* be delayed while that process takes place. When Qwest chose to provide voice mail and AIN features with a platform product in the past, for example, Qwest did not require any CMP process before providing those features.” *See* below.

<sup>2</sup> Eschelon’s Exhibits E-A through E-CC were filed previously in this matter. Therefore, the Exhibit numbers here begin with E-DD.

<sup>3</sup> *See* Second Report, p. 10 ¶¶ 40-41; *see also* Ex. E-EE (Qwest Data Request Response No. 001). In Ex. E-EE, Qwest states that AIN features have been available on a platform basis to McLeod since November of 2000 pursuant to Att. 3.2, Section IV.G of the McLeod Amendment. Eschelon has the identical

of the date of this filing.<sup>4</sup> Adding the same features in another state would take very little time, particularly if Qwest starts the process promptly.

If the Commission accepts Qwest's modified proposal to provide these features with UNE-P but not until after FCC 271 approval, the Commission should require Qwest to take the steps necessary now to be ready to do so immediately upon the effective date of FCC 271 approval. At least with respect to voice mail, Qwest states that it will require an interconnection agreement ("ICA") amendment to add the feature and that it will use the Change Management Process ("CMP") to notify CLECs of the availability of voice mail with UNE-P. *See* Qwest's Comments, p. 13. Qwest states that it will not even begin to initiate these steps until after FCC 271 approval. *See id.* There is no reason that Qwest cannot take those steps now so that it is prepared to offer these features immediately upon FCC 271 approval.

For the reasons stated in the enclosed Minnesota filing, an ICA amendment is not required between Eschelon and Qwest to obtain voice mail with UNE-P. *See* Ex. E-FF (July 2, 2003 letters with attachments A-C).<sup>5</sup> Qwest is using the alleged need for an amendment as a delaying tactic. *See id.* Nonetheless, Eschelon will take the path of least resistance and sign an amendment to obtain voice mail with UNE-P as promptly as possible. The content of Qwest's required ICA amendment is known, because Qwest imposed the same requirement in Minnesota. Eschelon has substituted Arizona for Minnesota in that amendment and executed it. *See* Ex. E-GG (voice mail with UNE-P ICA amendment for Arizona, executed by Eschelon). Eschelon asks Qwest to sign the amendment as well. No further delay is necessary for voice mail or AIN features.<sup>6</sup> If the Commission accepts Qwest's modified proposal to provide certain AIN features and voice mail with UNE-P but not until after FCC 271 approval, the Commission should require Qwest to take the steps necessary now to be ready to do so immediately upon the effective date of FCC 271 approval.

## **B. SWITCH FEATURES**

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language in its November 2000 agreement (also Att. 3.2, Section IV.G), but Qwest made Eschelon amend that agreement in July of 2001 to obtain AIN features at retail rates (7-8 months after Qwest made them available to McLeod).

<sup>4</sup> *See* Ex. E-DD (Qwest CMP notice PCAT\_VMSwUNE-P\_v1).

<sup>5</sup> Language similar to that in the Minnesota ICA (*see* Att. A to Ex. E-FF) also appears in the Arizona ICA. *See, e.g.*, Att. 2, ¶1.5; Part A (fourth Whereas clause), Part A, ¶52.

<sup>6</sup> While Qwest may need to notify CLECs through CMP of the availability of these features, it does not need to delay availability of the features while doing so. *See* Eschelon's Comments, footnote 21, and Ex.

Based on the record in this proceeding, the Staff has made reasonable recommendations regarding documentation and verification of information when Qwest claims that features are unavailable to CLECs because they are not activated or loaded in the switch. *See* Second Report, p. 11, ¶¶ 45-47. Qwest disagrees with these recommendations. *See* Qwest's Comments, pp. 6-8. Qwest's claim that existing processes already address the Staff's recommendations is incorrect. Qwest does not provide the straightforward and readily available vendor information described by Staff. There is no mention of it in Qwest's Special Request Process ("SRP"), and even if that process applies, the SRP imposes unknown and unpredictable individual case basis ("ICB") pricing just to obtain readily available vendor information. With respect to costs that Qwest asserts, there is no process to verify those costs. As recommended by Staff, Qwest should be required to "receive Commission approval of the charges subject to true-up."

### **C. TRAINING**

As indicated in Eschelon's Comments (p. 15), Eschelon supports Staff's recommendation that Qwest take certain steps to ensure its employees are trained in proper processes. *See* Second Report, p. 12, ¶¶ 50-51. Eschelon asked the Commission to adopt this recommendation and, when doing so, clarify that the Staff's reference to CMP is meant to ensure CLEC participation in the survey process (and not just receipt of notice, if any) through CMP. Qwest disagreed with the Staff's recommendation and pointed to its existing survey as evidence that the recommended actions were unnecessary. *See* Qwest's Comments, p. 11. In conducting that survey, Qwest's survey company representatives have called CLEC representatives out of the blue to ask questions that Qwest designed with no CLEC input. When William Markert of Eschelon received such a call in the middle of a busy day, he asked Qwest to provide the questions in writing so that he could consider the questions and give meaningful answers. Qwest's survey company representative said no. A better process is needed.

This is true of Qwest's training generally. It needs improvement. In many instances, when problems occur, Qwest's response is that the problem was caused by a non-compliance issue and that re-training is needed. In the situations discussed during the Workshops, long delays resulted from miscommunications and contradictory information provided by Qwest personnel. *See* Second Report, p. 12, ¶ 50. Better up-front processes are needed to prevent these problems. In particular, a streamlined

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E-FF, pp. 2-3. In any event, Qwest could initiate any needed CMP steps now to avoid delay, instead of

process is needed, as recommended by Staff, when these problems occur to avoid the types of delay that occurred in these situations. *See id.* ¶¶ 50-51. The Commission should adopt the Staff’s recommendations.

#### **D. DSL – DISCONNECT IN ERROR**

The length of time it takes to restore service when Qwest disconnects a CLEC customer’s DSL service in error is a very important issue. Staff made the following recommendation:

... Staff disagrees with Qwest that there is no need to impose a shorter restore interval for this problem. If Qwest disconnects a DSL service in error, this is the equivalent to a trouble condition. The DSL repair out of service commitment interval, therefore, should be used to restore service. This commitment should be documented in Qwest repair process procedures (Qwest Product Catalog (PCAT)-Maintenance and Repair Overview and Standard Interval Guide).

*See* Second Report, p. 17, ¶ 72. The Commission should adopt this recommendation.

When Eschelon converts a customer from Qwest to Eschelon, Qwest at times disconnects the customer’s DSL in error. For example, the Customer Service Record (“CSR”) may be inaccurate and show the DSL on the wrong line. Although the error is Qwest’s error, Qwest has said that its policy is to provide the CLEC the lengthy standard interval before Qwest will restore the DSL to the end-user customer.

Therefore, the CLEC’s end-user customers can wait days for their DSL service to be restored, when it never should have been disrupted. For some business customers that rely heavily on DSL service, a disruption in DSL service can be as important or more important than a disruption in voice service. If Qwest disconnects the DSL service of one of its retail customers in error, Qwest retail is unlikely to tell the customer that Qwest’s policy is to make the customer wait for days to restore the customer’s DSL service. Although Qwest states that, despite its policy, it “works with” the CLECs to attempt to restore service earlier, there is no commitment to do so. The Commission should establish an interval for this purpose, as recommended by Staff.

#### **E. MAINTENANCE AND REPAIR – DISCRIMINATION**

Staff agreed with Eschelon that the issue it raised with respect to discrimination in providing a statement of time and materials to retail customers but not CLECs was important and needs to be resolved. *See* Second Report, p. 21, ¶ 86. Qwest states in its Comments that “this change request was successfully deployed on June 25, 2003.” *See* Qwest’s Comments, p. 16. That is incorrect. Deployment has not proven successful, and unresolved issues remain. Change Request number SCR070202-1X has not been closed in

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waiting until after FCC 271 approval.

CMP.<sup>7</sup> It remains open and in CLEC Test status.<sup>8</sup> Qwest had to take back the issues to its system developers because Eschelon was unable to view any notices on the web site Qwest developed for this CR. There was discussion about putting it back in development phase, and that may happen if the issues are not resolved. As recommended by Staff, Qwest should advise the Commission when this process is agreed upon and actually implemented. *See* Second Report, p. 21, ¶ 86.

#### **F. MAINTENANCE AND REPAIR – UNTIMELINESS OF BILLS**

Eschelon discussed this issue at pages 18-20 of its Comments. In Qwest's Comments, Qwest states: "In order to meet Qwest's 60-day back billing policy, maintenance and repair charges will not be processed if the date on which the work was completed is 45 days or more in arrears of the process date." *See* Qwest's Comments, p. 16. As shown by the example on page 19 of Eschelon's Comments, however, Qwest claims to Eschelon that it is proper under the same policy to send a bill 75 days after the repair work was completed. The Commission should adopt the Staff's recommendation, with the clarification that the bills will be sent to the CLECs within 45 days of the repair date.

#### **G. LOSS AND COMPLETION REPORTS**

Eschelon discussed this issue at pages 17-18 of its Comments. In Qwest's Comments, Qwest states that "the change request associated with this recommendation was successfully deployed on June 25, 2003." It is not the case that all of the issues relating to loss and completion reports were resolved on June 25, 2003. There is still an open action item in CMP. Qwest has said in root cause analysis that it is implementing a change by the end of the month but has provided insufficient information about the change or the reason for the change to analyze this promise.

If Qwest had agreed to re-open the CR relating to timely and accurate loss and completion reports when problems re-surfaced, the CR could be placed in "CLEC test" status. Qwest opened an action item instead, however, and action items do not carry such status designations. Particularly because there have been numerous problems with the loss and completion reports that have extended over a long period of time, the Commission should require Qwest to ensure that it has completed the necessary work by requiring Qwest to perform a test. Qwest should be required to complete a comparison of the losses and completions

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<sup>7</sup> This is a crossover CR. *See also* PC070202-2X.

<sup>8</sup> The July CMP minutes are not yet posted on Qwest's wholesale web page. When posted, the minutes should reflect this status.



to the reports for resale, UNE-P, and unbundled loop, for a period of at least 30 days, to determine whether the reports are complete and accurate.<sup>9</sup> The Commission should require Qwest to provide the results of the comparison to the Commission and notify the Commission when the issue is resolved.

#### **H. APPLICATION OF RATES: DS1 CAPABLE LOOPS**

As indicated in Eschelon's Comments (pp. 4-11), since June, 2003, CLECs have experienced a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (*i.e.*, held orders). The problem has accelerated. At the time of filing Comments last week, Eschelon reported 13 in 25 days in Arizona. In the last week alone, Eschelon has received an additional 10 of these service inquiry jeopardy notices for DS1 capable loops in Arizona.

Since providing the DS1 capable loop information in Eschelon's Comments, Eschelon has obtained additional information about this issue.<sup>10</sup> An inadvertent Eschelon dispatch and an end user customer disclosure have led to discovery of information that shows that, despite Qwest's representations to the contrary, facilities are available at customer premises when Qwest says no facilities are available.<sup>11</sup> Both of these examples show that Qwest's claim that facilities are not available for DS1 capable loops so that construction is needed is not valid. Chronologies, with specific details (such as the identification numbers), for these examples are attached as Exhibits E-KK and E-LL.<sup>12</sup> An anti-competitive internal policy shift at Qwest after receiving 271 approval in virtually all of its states, and not a genuine need for construction of facilities, has led to the unjustified increase in number of held orders for DS1 capable loops.

##### **1. Example One: Qwest Claims No Facility Available, But Eschelon Inadvertently Discovers Facility is Installed and Working**

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<sup>9</sup> Losses are also on the Completion report. Qwest should find the losses on the Completion report and then determine whether it can find the same losses on the Loss report for the same date. In doing this comparison, if Qwest finds errors, Qwest should perform root cause analysis to determine the cause of the errors and correct them. If Qwest is correct that the issue is resolved and can be closed, the comparison will show that the Loss report is accurate.

<sup>10</sup> Eschelon also encloses emails and CMP notices received from Qwest on this issue as Exhibits E-HH (emails), E-II and E-JJ. Although Qwest has had this information all along, others have not. Other CLECs, such as Covad and Mountain Telecommunications in Arizona and Cbeyond in Colorado, are also experiencing the same problem.

<sup>11</sup> Eschelon could not provide these examples in the initial Comments because the information had not yet come to Eschelon's attention. If Qwest objects that it has not had an opportunity to reply, Eschelon has no objection to giving Qwest additional time to reply to the examples Eschelon provides here.

<sup>12</sup> Because of the inadvertent nature of these discoveries, Eschelon cannot predict when or how it will learn of such information. These two examples happened to have occurred in Utah and Washington. The same Qwest policies and processes apply in Arizona as in those states, as shown by the region-wide CRUNEC notices that Qwest is applying throughout its territory. *See* Exs. II-JJ.

In the first example (*see* Ex. E-KK), Eschelon submitted a Local Service Request (“LSR”) on June 5, 2003 and requested a due date of June 16, 2003 to install a DS1 capable loop. On June 6, 2003, Qwest sent Eschelon a confirmation notice (“LSRC” or “FOC”) that confirmed the due date and contained the circuit identification (“ID”) number for the DS1 capable loop to be delivered in response to Eschelon’s order. Between June 11, 2003 and July 22, 2003, Qwest sent several jeopardy notices to Eschelon regarding this order. One of these notices (the second to the last notice) stated that the “Order is released with 7/21/03 recommit date.” Therefore, Eschelon followed its processes to be prepared when the DS1 capable loop was installed on July 21, 2003.

The next day, on July 22, 2003, Qwest sent another jeopardy notice (the most recent one), which stated “Local Facility Defective” and contained no estimated due date.

This time, however, the comments to the notice also stated: “*Service inquiry – no qualified facilities available.*” A “service inquiry” jeopardy notice is a notice to CLECs that facilities are not available (*i.e.*, a held order). Although the order went held, Eschelon had already scheduled a technician dispatch for July 23, 2003 based on the earlier notice. Due to the shortness of time between notices, Eschelon had not stopped its internal process. It had not canceled the dispatch by the Eschelon technician. Therefore, Eschelon dispatched a technician to the customer location on July 23, 2003.

The Eschelon technician found the DS1 capable loop circuit installed and tagged with the circuit ID number at the customer premise. Because the Eschelon technician did not know the order went held, the technician performed routine procedures (test calls, surfing, *etc.*) to ensure the circuit was working for voice and data.

The Eschelon technician followed procedures and called Eschelon to close out the order. Much to the technician’s surprise, the technician was told that, according to Qwest, no facilities were available.

In fact, the very same allegedly non-existing facility had been installed and was working. The Eschelon technician has confirmed that the circuit ID number on the working DS1 capable loop was the very same as that on the LSRC (FOC) provided to Eschelon. *See* Exs. LL-MM (photographs showing NIU and circuit ID at customer demarcation location – “demarc”).<sup>13</sup> The working DS1 capable loop is the one that Eschelon ordered and Qwest said was not available.

If Eschelon’s technician had not been inadvertently dispatched, Eschelon would have had no way of knowing that a working facility was in place. Qwest did not notify Eschelon of this. Qwest’s position is that, when Qwest says there are no facilities available, Eschelon must follow Qwest’s twice revised no-build construction policy

(“CRUNEC”). If Eschelon had done so in this case, Qwest would have required Eschelon to pay a Quote Preparation Fee (“QPF”) (which in Arizona could be approximately \$1,600) and pay for “construction” of facilities to serve this customer. In addition to the high costs, Eschelon would have had to spend months following Qwest’s CRUNEC process steps (*see* Ex. II), if the customer would have waited that long. Meantime, the facility would have been there all along, without Eschelon’s knowledge. If the customer got fed up with the delays, the facility was there for Qwest Retail’s use.

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<sup>13</sup> The circuit ID number begins with “HCFU.” This code is used for DS1 capable loops.

**2. Example Two: Qwest Tells End User That Qwest Can Provide Service in Three Days When Eschelon's Order is Held for Lack of Facilities.**

In the second example (*see* Ex. E-NN), Eschelon submitted an LSR on July 8, 2003 and requested a due date of July 23, 2003 to install a DS1 capable loop. Qwest sent a confirmation notice that confirmed the due date and contained the circuit ID number for the DS1 capable loop to be delivered in response to Eschelon's order. On July 21, 2003, Qwest sent a jeopardy notice to Eschelon indicating that facilities were not available. The notice stated: "Unavailability or lack of outside plant or buried service wire. Outside plant includes all facilities - wire cable, terminals, carrier, cross connecting devices, etc." and the jeopardy notice contained no estimated due date. The next day, Qwest sent another jeopardy notice.<sup>14</sup> Neither notice provided an estimated due date for installing the DS1 capable loop.

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<sup>14</sup> This notice stated: "Unbundled only/RTT Issued." It is unclear what this means.

On July 23, 2003, the end user customer contacted Eschelon. He said that he spoke with an employee in Qwest's Engineering department. The Qwest employee told the end user that there was a T1<sup>15</sup> due today and there should be absolutely no problem putting a T1 at this address. The customer said that Qwest also said that it could hook it up in *three days* if he wanted to *go with Qwest*.

The end user then told Eschelon he was going to check the demarc at his location. The end user found a circuit at the demarc. As with the other example, the circuit ID is the same circuit ID that Qwest provided for the DS1 capable loop on the LSRC (FOC) sent to Eschelon. The DS1 capable loop at the demarc is the one that Eschelon ordered and Qwest said was not available *to Eschelon*. Qwest told the customer, however, that the facility would be available through Qwest Retail within three days. When a CLEC has to tell a customer that there will be an indefinite delay in an order due to lack of facilities, but Qwest Retail can provide those facilities within a few days, the competitive disadvantage is clear. Qwest is using its alleged need for construction to place its competitors at a disadvantage and improperly winback customers.

These examples specifically, and the increase in number of jeopardy notices for service inquiry (no build) for DS1 capable loops generally, raise questions that should be answered before Qwest receives any positive recommendation as to 271 approval.

### **III. CONCLUSION**

The Commission should adopt the recommendations of the Staff in the Second Report with respect to resolution of the impasse issues, with the clarifications discussed here and in Eschelon's Comments. With respect to compliance with 271, several of the items require follow up action. Qwest should complete those actions and verify compliance before obtaining a positive 271 recommendation. Eschelon also asks the Commission to first require Qwest to undo the changes it has made (and suspend those it is making pursuant to the twice revised CRUNEC policy) to its processes -- thereby decreasing the number of jeopardy notices for service inquiry/no build -- until Qwest brings those changes and associated rates to the Commission and obtains approval.

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<sup>15</sup> DS1 capable loops are often referred to as "T1s."

July 25, 2003

ESCHELON TELECOM, INC.

By:

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Karen L. Clauson  
Eschelon Telecom, Inc.  
730 2nd Avenue South, Suite 1200  
Minneapolis, MN 55402-2456  
(612) 436-6026

## Verification

07/25/2003 FRI 14:54 FAX 812 438 6816

ESCHELON Reg./Legal Dept

001

BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER  
Chairman  
JIM IRVIN  
Commissioner  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
MIKE GLEASON  
Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996


**Docket No. T-00000A-97-0238**

### VERIFICATION OF LAURIE A. LARSON

I, Laurie A. Lurson, being duly sworn, state that I am the Senior Director, Service Delivery, for Eschelon Telecom, Inc. By this affidavit, I verify the factual assertions as true and correct statements to the best of my knowledge in regard to the Reply Comments filed today in this proceeding by Eschelon Telecom, Inc.

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

**FURTHER AFFIANT SAYETH NOT.** Dated this 25th day of July 2003.

T. Dated this 25th day of July 2003.  
  
 Laurie A. Larson

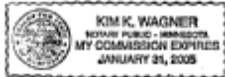
SUBSCRIBED AND SWORN TO before me this 25<sup>th</sup> day of July, 2003 by Laurie A. Larson, who certifies that the foregoing is true and correct to best of her knowledge and belief.

Witness my hand and official seal.

Kim Wagner  
Notary Public

My commission expires:

1/31/05



## **Exhibits**

### **E-DD (CMP notice for voice mail with UNE-P in MN)**

## **EXHIBIT E-DD**

### **Qwest Voice Messaging Services (VMS) with Unbundled Network Elements-Platform (UNE-P) – V1.0**

[History Log](#) (Link blue text to: Replace Existing Download With Attached history log.)

#### **Product Description**

Qwest Voice Messaging Service (VMS) is available in Minnesota with compatible Unbundled Network Elements – Platform (UNE-P) services. VMS with UNE-P provides voice mailbox service functionally equivalent to the Qwest Retail business and residential VMS offerings. For information on VMS functionality and operability refer to [Qwest Voice Messaging](http://qwest.com/wholesale/clecs/features/vmsres.html) (link blue text to: <http://qwest.com/wholesale/clecs/features/vmsres.html>) for residential and [Qwest Business Voice Messaging Service General Information](http://qwest.com/wholesale/clecs/features/bvmgsi.html) (link blue text to: <http://qwest.com/wholesale/clecs/features/bvmgsi.html>).

The following VMS services are available with UNE-P:

- [Listen Only Mailbox – Business Only](http://www.qwest.com/wholesale/clecs/features/lombxbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/lombxbus.html>)
- [Mailbox Only– Residence Only](http://qwest.com/wholesale/clecs/features/mbxres.html) (link blue text to <http://qwest.com/wholesale/clecs/features/mbxres.html>)
- [Transfer Mailbox – Residence and Business](http://www.qwest.com/wholesale/clecs/features/transmbxresbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/transmbxresbus.html>)
- [Voice Mail Mailbox – Business Only](http://www.qwest.com/wholesale/clecs/features/vmmbxbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/vmmbxbus.html>)

The following VMS features and services are available with VMS:

- [Additional Message Capacity - 50/100 Residence and Business](http://www.qwest.com/wholesale/clecs/features/amc50_100resbus.html) (link blue text to: [http://www.qwest.com/wholesale/clecs/features/amc50\\_100resbus.html](http://www.qwest.com/wholesale/clecs/features/amc50_100resbus.html)) adds a capacity of 50 or 100 additional messages to a voice mailbox.
- [Extension Mailbox – Residence and Business](http://www.qwest.com/wholesale/clecs/features/exmbxresbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/exmbxresbus.html>) allows three extensions to be added to the main mailbox. Callers can then leave general messages in the main mailbox or private messages in individual extension mailboxes.
- [Message Notification – Residence and Business](http://www.qwest.com/wholesale/clecs/features/messnotresbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/messnotresbus.html>) programs the voice messaging to notify a pager or telephone number when a message is received.
- [Scheduled Greetings – Business Only](http://www.qwest.com/wholesale/clecs/features/schedgreetbus.html) (link blue text to <http://www.qwest.com/wholesale/clecs/features/schedgreetbus.html>) automatically changes the end-user's greeting according to an end-user determined schedule. For example, plays one greeting during open hours and another during closed hours.
- Routers allow the end-user to program a main greeting that directs callers to leave a message for different people or departments. The BVMS offers two types of routers:
  - [Call Routing – Business Only](http://www.qwest.com/wholesale/clecs/features/callroutbus.html) (link blue text to <http://www.qwest.com/wholesale/clecs/features/callroutbus.html>)
  - [Call Routing to Number – Business Only](http://www.qwest.com/wholesale/clecs/features/callroutnumberbus.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/callroutnumberbus.html>)



- [Call Router Traffic Study – Business Only](http://www.qwest.com/wholesale/clecs/features/callroutrafficbus.html) (Link blue text to: <http://www.qwest.com/wholesale/clecs/features/callroutrafficbus.html>)

You must determine and order features that are available, serve the end-user's needs, and are compatible with the end-user's equipment.

The following standard features are automatically provisioned with VMS mailboxes serving residential end-users: Autoplay, Call Sender, and Check Receipt. For feature descriptions refer to [Qwest Voice Messaging](http://www.qwest.com/wholesale/clecs/features/vmsres.html). (link blue text to: <http://www.qwest.com/wholesale/clecs/features/vmsres.html>)

Complete instructions on setup and operation of Voice Messaging Service can be found in the [Voice Messaging User Guide](http://www.qwest.com/residential/pdf/VoiceMessaging.pdf). (Link blue text to: <http://www.qwest.com/residential/pdf/VoiceMessaging.pdf>)

The optional vertical switch features Call Forwarding and Message Waiting Indication are used with VMS. For feature information, refer to the [UNE-P Features Matrix](http://www.qwest.com/wholesale/clecs/features/uneppurefeatures.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/features/uneppurefeatures.html>).

## Availability

Qwest VMS will be available with compatible UNE-P services after Qwest receives Section 271 approval for the state of Minnesota from the Federal Communications Commission.

VMS mailboxes are available in Minnesota with compatible UNE-P services provided to residential and/or business end users. VMS packages are not available.

VMS availability is dependent on the capabilities of each serving Qwest CO switch. You may determine availability for each switch by using the following resources:

- The Interconnect Mediated Access (IMA) Graphic User Interface (GUI) Pre-Order functions. For instructions on how to check optional feature availability, refer to the pre-order section of the [IMA User's Guide](http://www.qwest.com/wholesale/ima/gui/imauser.html). (link blue text to: <http://www.qwest.com/wholesale/ima/gui/imauser.html>)
- The [ICONN database](http://www.qwest.com/iconn/), (link blue text to: <http://www.qwest.com/iconn/>) which provides information on Qwest's local network, including optional features activated in each individual Qwest central office switch, by USOC. Some listed features may not be available with UNE-P.
- The [BVMS Lookup Table](http://www.qwest.com/wholesale/guides/bvms) provides Business VMS availability, Call Forwarding, and Retrieval Numbers. (Link blue text to: <http://www.qwest.com/wholesale/guides/bvms>)

In addition to the feature information available by the aforementioned resources, USOCs and FIDs are described in the [Universal Service Order Codes \(USOCs\) and Field IDentifiers \(FIDs\) Overview](http://usocfidfind.qwest.com/) (link blue text to: <http://usocfidfind.qwest.com/>). Use of the USOC/FID Finder will assist you in identifying features by USOC and/or FID.

Additional information can be found in the [Pre-Ordering Overview](http://www.qwest.com/wholesale/clecs/preordering.html). (Link blue text to: <http://www.qwest.com/wholesale/clecs/preordering.html>).

## Compatibility & Restrictions

Refer to the specific Voice Messaging PCAT links found in the Product Description (link back to Product Description) to determine capability and restrictions.

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## Pricing

### Rate Structure

When provided with UNE-P, Qwest VMS and Qwest VMS features and services are available at retail rates. Qwest VMS recurring and nonrecurring charges may be found in

state specific [Tariffs/Catalogs/Price Lists](http://tariffs.uswest.com:8000/). (link blue text to: <http://tariffs.uswest.com:8000/>)  
Qwest retail/resale VMS promotions are not available with UNE-P services.

The Feature Change Nonrecurring Charge, USOC NHCVQ, provided in your Interconnection Agreement is applicable per order when you add, remove, or change optional switch features on existing UNE-P services, e.g. adding, removing, changing call forwarding.

Your Interconnection Agreement must include specific terms and conditions to purchase VMS service with UNE-P service. Contact your [Qwest Sales Executive or Service Manager](http://www.qwest.com/wholesale/clecs/accountmanagers.html) (link blue text to: <http://www.qwest.com/wholesale/clecs/accountmanagers.html>) if you need to amend your Interconnection Agreement.

## **Rates**

Rates can be found in Exhibit A or the specific rate sheet in your Interconnection Agreement.

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## **Ordering**

### **Ordering Rules**

Refer to the specific Qwest VMS PCATs in [Product Description](#) (Anchor blue text to the product description section of this PCAT) for ordering information.

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**Last Update: August 8, 2003**

1A-ESS™ is a Trademark of Lucent Technologies, Inc.

5ESS® is a Registered Trademark of Lucent Technologies, Inc.

Centrex Prime®, Centron®, CustomChoice®, Dial Lock®, DID®, Market Expansion Line® and No Solicitation® are Registered Trademarks of Qwest Communications, Inc.

DMS™ is a Trademark of Nortel Networks.

Qwest DSL™ and Qwest Stand-By Line™ are Trademarks of Qwest Communications International, Inc.

Scan-Alert□ is a Service Mark of Ameritech.

**E-EE (Qwest data response re. AIN to McLeod)**

07/24/2003 THU 11:08 FAX 612 436 8316

ESCHELON Reg./Legal Dept

001

Minnesota  
P421/C-03-627  
ESCH 03-001

INTERVENOR: Eschelon Telecom, Inc.

REQUEST NO: 001

In response to DOC 008, Qwest states that Eschelon "would have to give up AIN features and Directory listings currently provided pursuant to its agreement with Qwest since those features are not included in the McLeod agreement."

a. Does Qwest actually provide AIN features to McLeod in conjunction with UNE-M, even though it is not stated in the McLeod agreement?

b. Does Qwest provide Directory listings to McLeod in conjunction with UNE-M, even though it is not stated in the McLeod agreement?

RESPONSE:

a. Qwest does provide certain AIN features to McLeod in conjunction with UNE-M at Retail rates. Contrary to the assumption in this request, Qwest's agreement with McLeod provides for McLeod to purchase features at Retail rates. See Attachment 3.2, Section IV.G.

b. Qwest does provide directory listings to McLeod in conjunction with UNE-M. Contrary to the assumption in this request, Attachment 3.2, III.C. of their Oct. 2000 agreement addresses this issue.

Respondent: Anthony Washington

**E-FF (MN letters re. voice mail with UNE-P, with attachments)**

07/24/2003 THU 08:55 FAX 612 438 8818

ESCHELON Reg./Legal Dept

001

July 2, 2003



*By overnight express service*  
Director Interconnection Compliance  
Qwest  
1801 California, Room 2410  
Denver, CO 80202

Re: Voice mail with UNE-P; Notice of Breach Pursuant to Part A, paragraph 28 of the Minnesota Interconnection Agreement

Dear Director of Interconnection Compliance:

Eschelon provides this Notice to Qwest of a material breach of the Minnesota Interconnection Agreement ("ICA") between Qwest and Eschelon. We have previously apprised Jason Topp, JoAnn Hanson, and Jean Novak of Qwest of this breach and now also provide formal notice pursuant to Part A, paragraph 28 of the ICA. Eschelon is entitled to order voice mail with UNE-P, but Qwest will not process UNE-P orders with voice mail under the ICA. Qwest's conduct is a breach of the ICA.

Attachment A to this notice contains excerpts from the ICA language. Attachment B is a proposed ICA amendment that contains language identical to that otherwise agreed to by Qwest in Minnesota, but which Qwest will not sign. Attachment C is a screen shot of a Qwest systems edit error message indicating that Qwest refused an order that Eschelon placed today in Minnesota on the grounds that Eschelon requested voice mail with UNE-P.

**Existing ICA governs.** Under the terms of the existing ICA between Qwest and Eschelon, Eschelon may both order combinations and resell voice mail, which entitles Eschelon to order voice mail with UNE-P, at rates approved by the Commission. See, e.g., Attachment A (containing excerpts from the interconnection agreement language). Qwest has long taken the position that this ICA language no longer applies (apparently based upon change of law provisions). Qwest unilaterally made this decision about the ICA interpretation and enforced its own interpretation by refusing such orders. Since then, Qwest agreed to change its position in the 271 proceedings. Qwest agreed to provide voice mail with UNE-P upon 271 approval. Qwest has obtained FCC 271 approval for Minnesota. Therefore, the claimed grounds for refusing to honor the ICA language no longer exist. Nonetheless, Qwest has informed Eschelon that it will not provide voice mail with UNE-P under the ICA.

Qwest said it requires an ICA amendment before processing any such orders. (In contrast, Qwest did not amend the ICA when it previously decided not to offer voice mail

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voice data Internet equipment

## **E-GG (AZ voice mail with UNE-P amendment)**

07/25/2003 FRI 08:44 FAX 612 436 8316

ESCHELON Reg./Legal Dept

001

### **EXHIBIT E-GG**

Qwest Voice Messaging Service with UNE-P Amendment  
To the  
Interconnection Agreement  
between  
Qwest Corporation  
And  
Eschelon Telecom of Arizona, Inc.

This is an Amendment ("Amendment") to the Interconnection Agreement between Qwest Corporation ("Qwest"), a Colorado corporation, and Eschelon Telecom of Arizona, Inc. ("CLEC").

### **RECITALS**

WHEREAS, the Parties entered into an Interconnection Agreement, for service in the State of Arizona, that was approved by the Arizona Corporation Commission ("Commission") on April 28, 2000, as referenced in Docket No. 62469 ("Agreement"); and

WHEREAS, the Parties wish to amend the Agreement under the terms and conditions contained herein.

### **AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **Amendment Terms**

The Agreement is hereby amended by adding terms, conditions and rates for Qwest Voice Messaging Service with UNE-P, as set forth in Attachment 1 and Exhibit A, attached hereto and incorporated herein.

Rates in Exhibit A will reflect legally binding decisions of the Commission and shall be applied on a prospective basis from the effective date of the legally binding Commission decision, unless otherwise ordered by the Commission.

#### **Effective Date**

This Amendment shall be deemed effective upon approval by the Commission; however, the parties may agree to implement the provisions of this Amendment upon execution. To accommodate this need, CLEC must generate, if necessary, an updated Customer Questionnaire. In addition to the Questionnaire, all system updates will need to be completed by Qwest. CLEC will be notified when all system changes have been made. Actual order processing may begin once these requirements have been met.

#### **Amendments; Waivers**

The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the

July 25, 2003/msd/Eschelon/VMS/AZ

1

provisions of this Agreement may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any party of any default, misrepresentation, or breach or warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

**Entire Agreement**

This Amendment (including the documents referred to herein) constitutes the full and entire Amendment and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of this Amendment.

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**Eschelon Telecom of Arizona, Inc.****Qwest Corporation**

 Authorized Signature	_____ Authorized Signature
Richard A. Smith	_____ Name Printed/Typed
Name Printed/Typed	_____ Name Printed/Typed
President and Chief Operating Officer	_____ Title
Title	_____ Title
July 25, 2003	_____ Date
Date	_____ Date

## ATTACHMENT 1

Arizona Voice Messaging Service  
With Unbundled Network Elements -- Platform (UNE-P)**1.0 Description**

- 1.1 Qwest Voice Messaging Service (VMS) with UNE-P.

**2.0 Terms and Conditions**

- 2.1 Qwest VMS will be available and CLEC may order new or retain existing Qwest VMS with compatible UNE-P services.
- 2.2 CLEC will order residential Qwest VMS for CLEC residential End User Customers and Business Qwest VMS for CLEC business End User Customers.
- 2.3 VMS is not an Unbundled Network Element.

**3.0 Rate Elements**

- 3.1 See Qwest Arizona Exchange and Network Services Tariff, Catalog, and Price List for applicable VMS Recurring and Nonrecurring Rates.
- 3.2 VMS provided with UNE-P combinations are provided at Qwest retail rates.

**EXHIBIT A**  
**Arizona**

				Recurring	Non-Recurring
Qwest Voice Messaging Service (VMS) with UNE-P				See Qwest Arizona Exchange and Network Services Tariff, Catalog, and Price List for applicable VMS Recurring and Nonrecurring Rates	



**E-HH (Emails re. DS1 capable loops)**

**EXHIBIT E-HH**

-----Original Message-----

**From:** Smith, Richard A.  
**Sent:** Thursday, July 03, 2003 11:14 AM  
**To:** 'Taylor, Teresa'  
**Subject:** RE: DS1 Facility Response

Ms. Taylor/Teresa:

Thank you - will distribute to the Eschelon Team.

Will let you know if the charges are not complying with Tariffs/Agreements and if there continues to be compliance issues.

Rick Smith

-----Original Message-----

**From:** Taylor, Teresa [[SMTP:Teresa.Taylor@qwest.com](mailto:SMTP:Teresa.Taylor@qwest.com)]  
<<mailto:SMTP:Teresa.Taylor@qwest.com>>  
**Sent:** Thursday, July 03, 2003 10:15 AM  
**To:** 'rasmith@eschelon.com'  
**Subject:** DS1 Facility Response

Per our phone conversation;

for DS1 or above facilities we have the obligation to unbundle existing facilities; this would include the electronics and intermediate repeaters as required. If the span line does not exist, you have the option to request and pay for what you need. Qwest has in the past not fully enforced our contractual right to collect on the charges incurred when completing DS1 level unbundled services. Charging is the specific change that has occurred

When facilities are not available, you may contact your service managers for options including the CRUNEC process .

In order to make sure that all Qwest employees are consistent; this guidance is included in a revised MCC released to the service center yesterday July 2. In addition, the Network Engineering organization will be releasing a revised notice to clarify this issue with the appropriate engineering forces.

thanks for bringing this to my attention Rick - I believe moving forward you will hear a consistent message from our employees

have a wonderful 4th of July

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, July 07, 2003 10:38 AM  
**To:** 'Jlnovak@qwest.com'; 'jtietz@qwest.com'; 'Scott Martin'; 'Richardson, Anne'; 'Austin, Coleen'  
**Cc:** Korthour, Mary J.; Markert, William D.; Copley, Ellen M.; Johnson, Bonnie J.; Larson, Laurie A.  
**Subject:** RE: DS1 capable loop held orders

It would also be useful if Qwest could provide the text of the MCCs sent to its employees on this issue (mentioned by Teresa Taylor in her note below), so that we know what information has been provided to the people we will be dealing with. (Sorry for the second email. Hit send before I added this.)

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, July 07, 2003 10:32 AM  
**To:** 'Jlnovak@qwest.com'; 'jtietz@qwest.com'; 'Scott Martin'; Richardson, Anne; Austin, Coleen  
**Cc:** Korthour, Mary J.; Markert, William D.; Copley, Ellen M.; Johnson, Bonnie J.; Larson, Laurie A.  
**Subject:** FW: DS1 capable loop held orders

Below is a note from Teresa Taylor to Rick Smith regarding the DS1 capable loop issue. We understand that this note confirms the conversation between Rick and Teresa. Teresa indicated that there had been a miscommunication at Qwest, and orders would go back to being processed (including incremental facility work) rather than being placed in held order status (service inquiry). The only change would be a rate change, such that Qwest will begin charging rates -- when approved by a Commission -- in some situations in which it was not previously charging those rates.

We would appreciate it if you could identify for us more specifically (1) which rates Qwest will begin to charge (2) in which states (3) under what circumstances and (4) effective upon what date (per state). If a notice has been sent about this, please direct me to the appropriate notice. Thank you.

In addition, this leaves open the status of the orders for which Qwest sent jeps in the last weeks that should not have received jeps if the Qwest miscommunication had not occurred. We could not afford more delay and have been forced by Qwest's error to place orders for private lines for those orders. (We will need to do this until the problem has been corrected. Teresa told Rick that there could be a short delay while she gets the message out to the appropriate people.) Because these orders should not have been jep'd and placed in held status: (1) the lower DS1 capable loop rate should apply to these lines, (2) Qwest should promptly convert these lines to DS1 capable loops, and (3) there should be no charge for the conversion (which would not be needed, if Qwest had processed the DS1 capable loop orders instead of erroneously jep'ing them). Mary Korthour will provide Qwest with a list of the lines to date for which we had to order private lines when we should have been able to order DS1 capable loops as a result of this issue. Please let us know if Qwest does not agree/wil not adjust the bills and perform the conversion accordingly.

Please let me know who will provide the rate information and when. Thank you.

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Joan Masztaler [SMTP:jmaszta@qwest.com]  
**Sent:** Tuesday, July 08, 2003 7:47 PM  
**To:** klclauson@eschelon.com  
**Cc:** Teresa.Taylor@qwest.com; Jean Novak; Toni Dubuque; Anne Richardson; bjjohnson@eschelon.com  
**Subject:** FW: DS1 capable loop held orders

Karen,

I believe that you misunderstood Teresa Taylor's email on the provisioning of DS1-capable loops. Let me provide this information as clarification

1. As Teresa reiterated, Qwest's unbundling obligations extend only to existing DS1 facilities. Therefore, CLECs may have unbundled access to Qwest's DS1-capable loops if Qwest has existing facilities (meaning, a DS1-capable loop already in place that goes from a DSX panel to the field and is currently capable of meeting the service specifications associated with a DS1). Qwest will do incremental facility work (e.g., cross-connects etc.) to provision an existing DS1 facility for a CLEC. (As these are DS1-capable loops, there is no need for conditioning to remove load coils and bridged tap.)
2. When an existing DS1 facility is not available, the CLEC can still pursue the end user, but Qwest will have to construct the facility. The order will go into held status and the CLEC is notified via a jeopardy notice. At this point the CLEC is advised that they can contact their service manager for additional options including CRUNEC. Teresa did not intend for her message to be construed as a change in this process. CRUNEC is not part of the normal provisioning process; and it was not an "error" that Eschelon's DS1-capable loop orders were held. Qwest cannot resume processing the orders. Eschelon may contact the service manager for additional options.
3. When there is no existing DS1-capable loop facility available for unbundling, one of the options for the CLEC is to request and pay for construction charges under CRUNEC. It is the CRUNEC charges that Teresa is referring to when she states a charge will apply.

I hope this has provided clarification to the provisioning of DS1 capable loops. Please discuss this matter with Mr. Smith, and if you still believe that there is confusion over this process, please contact me and I will see if we cannot get it cleared up.

Joan Masztaler  
Qwest  
Director-Customer Service Operations  
303-896-8331

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Wednesday, July 09, 2003 10:18 AM  
**To:** 'Joan Masztaler'  
**Cc:** Teresa.Taylor@qwest.com; Jean Novak; Toni Dubuque; Anne Richardson; 'Judith Schultz'; Johnson, Bonnie J.  
**Subject:** RE: DS1 capable loop held orders

The statement in Teresa's email is very specific. It states: "Qwest has in the past not fully enforced our contractual right to collect on the charges incurred when completing DS1 level unbundled services. Charging is the specific change that has occurred." Teresa very clearly states that (1) a change has occurred; and (2) the change specifically is to start "charging" rates that were not previously charged because Qwest states that it has "not fully enforced our contractual right to collect on the charges." Eschelon's questions relate to these charges, and Qwest needs to answer them so that we can plan for these charges. Teresa Taylor recognized in her conversation with Rick that Eschelon may even object to these charges. We can't review whether to object, however, unless we know what they are and when they apply. Therefore, we asked:

We would appreciate it if you could identify for us more specifically (1) which rates Qwest will begin to charge (2) in which states (3) under what circumstances and (4) effective upon what date (per state). If a notice has been sent about this, please direct me to the appropriate notice.

These questions relate directly to Teresa's statement that "Charging is the specific change that has occurred." Qwest has made a change, so Qwest must know what the change is. We simply want you to share that information with us, as we are affected by the change.

The rest of our questions are equally on point. Teresa recognized that jeps were being sent when they should not be (because the change that "has occurred" relates to charges and not whether an order will be processed). Qwest jep'd orders that should not have been jep'd, and Qwest needs to remedy this situation. So, Qwest needs to address these questions from my previous email:

this leaves open the status of the orders for which Qwest sent jeps in the last weeks that should not have received jeps if the Qwest miscommunication had not occurred. We could not afford more delay and have been forced by Qwest's error to place orders for private lines for those orders. (We will need to do this until the problem has been corrected. Teresa told Rick that there could be a short delay while she gets the message out to the appropriate people.) Because these orders should not have been jep'd and placed in held status: (1) the lower DS1 capable loop rate should apply to these lines, (2) Qwest should promptly convert these lines to DS1 capable loops, and (3) there should be no charge for the conversion (which would not be needed, if Qwest had processed the DS1 capable loop orders instead of erroneously jep'ing them). Mary Korthour will provide Qwest with a list of the lines to date for which we had to order private lines when we should have been able to order DS1 capable loops as a result of this issue. Please let us know if Qwest does not agree/will not adjust the bills and perform the conversion accordingly. [Mary has since provided that information.]

We would like a prompt response to these questions, which stem directly from the information that Teresa Taylor provided to Eschelon. Your restatement of the issue does not change the information provided to us directly by Teresa Taylor. Her information raised follow up questions, and we would appreciate responses.

-----Original Message-----

**From:** Joan Masztaler [SMTP:jmaszta@qwest.com]  
**Sent:** Thursday, July 10, 2003 12:14 PM  
**To:** klclauson@eschelon.com  
**Cc:** Teresa.Taylor@qwest.com; Jean Novak; Toni Dubuque; Anne Richardson; 'Judith Schultz'; Johnson, Bonnie J.  
**Subject:** RE: DS1 capable loop held orders

Karen,  
Jeopardy notices are not being sent out by mistake. If a DS1 facility is not available Qwest will issue a jeopardy notice to the CLEC. I believe I answered this question in my previous email. When the CLEC receives the jeopardy notice they have several choices: they may contact the service manager to discuss the CRUNEC process, elect to provision a private line DS1, cancel the order, leave the order in held status for 30 days, elect at a future time to resubmit the order to determine if facilities are available. The cost will depend upon the choice the CLEC makes. If a private line DS1 is requested the appropriate tariff rate would apply. If the CLEC is interested in the CRUNEC process, they must have language in their ICA that is in the SGAT under 9.19 and the associated rates that are in Exhibit A by state. The change that Teresa is referring to is a recent change in the CRUNEC process that removed the word "conditioning" to eliminate confusion on unbundled DS1-capable loops. In addition Teresa indicated that our internal processes have been reviewed and reinforced to meet compliance with our existing PCAT and SGAT provisioning of DS1 capable loops.

Joan Masztaler  
Qwest  
Director-Customer Service  
(303) 896-8331

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Thursday, July 10, 2003 1:10 PM  
**To:** 'Joan Masztaler'  
**Cc:** Teresa.Taylor@qwest.com; Jean Novak; Toni Dubuque; Anne Richardson; 'Judith Schultz'; Johnson, Bonnie J.  
**Subject:** RE: DS1 capable loop held orders

Teresa:

This is different from Eschelon's understanding of your conversations with Rick Smith, particularly with respect to (1) whether order processing over the last few weeks was affected by the miscommunication at Qwest and (2) the change at Qwest that will result in charges when Qwest did not previously charge. Rick recalls you saying that we may disagree on the charges, but at least we will get the orders flowing while we debate that issue. Do you recall something like that? Can you explain how it fits with what Joan says below?

Is there anything that you could add to what Joan has said to help clear up what appears to be quite different information? We would like you to have an opportunity to address this personally if you would like, as we decide on next steps.

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Thursday, July 10, 2003 1:43 PM  
**To:** 'adubuqu@qwest.com'  
**Subject:** FW: SERVICE INQUIRIES - facilities for DS1 capable loops

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, July 01, 2003 11:57 AM  
**To:** 'jlnovak@qwest.com'  
**Cc:** Larson, Laurie A.; Miller, Todd R.; Johnson, Bonnie J.  
**Subject:** RE: SERVICE INQUIRIES - facilities for DS1 capable loops

To be sure the issue you are reviewing and responding to is clear, I'll point out that "line conditioning" itself is only part of the issue. We are talking about the various ways (only one of which is called "line conditioning") that Qwest may provide facilities. In paragraph 164 of the FCC's 9-state Qwest 271 Order (12/20/02), the FCC said: "The record shows that Qwest attempts to locate compatible facilities for competing LECs" and "performs incremental facility work to make UNEs available." In footnote 617, the FCC quotes section 9.1.2.1.2 of Qwest's SGAT, which states:

9.1.2.1.2 If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and Remote Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises

Qwest has represented to the FCC that it is Qwest's existing policy and practice to make attempts to locate compatible facilities and to perform incremental facility work to make UNEs available. DS1 capable loops are UNEs. We are asking Qwest to ensure that it is enforcing this policy and practice and completing the necessary incremental facility work to provide facilities.

The fact that the number of jeopardy notices for service inquiry/held orders has jumped suggests that Qwest is not doing so or has made some other change leading to this increase.

--Please explain the basis for the increase in these notices.

--Please let us know what Qwest is doing to remedy this situation and decrease the number of such notices.

--Please treat this as a high priority request. If you need to escalate or involve your attorneys, please do so. We need relief from the jep notice problem ASAP.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Thursday, July 10, 2003 4:44 PM  
**To:** 'adubuqu@qwest.com'  
**Subject:** FW: construction charges/DS1 capable loops

I am back at my desk and found this SGAT provision (that I mentioned on the phone). You have probably found this one too by now, but here it is just in case. Appreciate your looking into these issues and look forward to hearing from you.

#### **9.19Construction Charges** (emphasis added)

Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. **When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer.** If Qwest agrees to construct a network element that satisfies the description of a UNE contained in this agreement, that network element shall be deemed a UNE.



-----Original Message-----

**From:** Dubuque, Toni [SMTP:Toni.Dubuque@qwest.com]  
**Sent:** Friday, July 11, 2003 12:29 PM  
**To:** 'klclauson@eschelon.com'  
**Cc:** Masztaler, Joan; Taylor, Teresa  
**Subject:** DS1 Capable loop discussion

Karen,

Here is some additional information to help clarify our discussion yesterday on DS1 capable loops.....

First of all, you asked what are the steps taken in the field when an order is received for a DS1 capable loop...the assignment process or 11 step process (as referenced by you in our call) is used for these loops. You can reference this documented process by looking in the PCAT under <<http://www.qwest.com/wholesale/clecs/provisioning.html>> . There is a word doc for copper facilities listing out the entire 11 step process. I know you are familiar with that process and it does apply to this product. So, that really spells out the steps we take when an order comes through. If we determine there are no facilities after going through these steps, then the last sentence in the SGAT 9.1.2.1 applies and we would offer CRUNEC process as one alternative.

*9.1.2.1 If facilities are not available, Qwest will build facilities dedicated to an End User Customer if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. CLEC will be responsible for any construction charges for which an End User Customer would be responsible. In other situations, Qwest does not agree that it is obligated to build UNEs, but it will consider requests to build UNEs pursuant to Section 9.19 of this Agreement.*

#### **9.19 Construction Charges**

*Qwest will assess whether to build for CLEC in the same manner that it assesses whether to build for itself. Qwest will conduct an individual financial assessment of any request that requires construction of network capacity, facilities, or space for access to or use of UNEs. When Qwest constructs to fulfill CLEC's request for UNEs, Qwest will bid this construction on a case-by-case basis. Qwest will charge for the construction through nonrecurring charges and a term agreement for the remaining recurring charge, as described in the Construction Charges Section. When CLEC orders the same or substantially similar service available to Qwest End User Customers, nothing in this Section shall be interpreted to authorize Qwest to charge CLEC for special construction where such charges are not provided for in a Tariff or where such charges would not be applied to a Qwest End User Customer. If Qwest agrees to construct a network element that satisfies the description of a UNE contained in this agreement, that network element shall be deemed a UNE.*

If you go to Appendix A in the SGAT under CRUNEC, you will see that in CO the quote charge is ICB as it is in many states. A quote of actual charges will then be provided including all of the time and materials that the job will require. Charging of course will depend on the magnitude of the job involved. I know that you wanted a definitive cost but since each situation is so different that is not possible and it is the reason why Qwest has set it up as a quote process.

The other question that came up in our discussion is one on incremental facilities as stated below in 9.1.2.1.2. If the facility (DS1 capable loop) is available, we would do the incremental facility work per the SGAT at no additional cost.

9.1.2.1.2 *If cable capacity is available, Qwest will complete incremental facility work (i.e., conditioning, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and Remote Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.*

I believe this information is consistent with what Joan has already given you and I did add the reference to the 11 step process which is applicable for DS1 capable loops. I hope that this helps give you a better picture. I told Teresa that we were working on this and she has been in the loop on all our correspondence so far. She believes this is consistent with what she discussed with Rick. Let me know if you need anything else. I am on vacation this afternoon so let's talk Monday if necessary.

*Toni Dubuque*

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Friday, July 11, 2003 2:58 PM  
**To:** 'Dubuque, Toni'  
**Cc:** Masztaler, Joan; Taylor, Teresa  
**Subject:** RE: DS1 Capable loop discussion

Thank you for the information, Toni. I appreciate your assistance. Your statement on incremental facility work is more clear, and we appreciate the clarification. I still need to review with others internally, but a couple of things that I would like to discuss with you on Monday:

The first piece that does not seem to be addressed yet are Joan's statements that "it was not an error that Eschelon's DS-1 capable loop orders were held" and that "jeopardy notices are not being sent out by mistake." We do believe that the spike in jeps did reflect an error that led to erroneous jeps, and we have confirmed again with Rick that he had understood Teresa to say that she agreed and needed a short time to get that problem fixed. We still want Qwest to re-look at those jep orders and see whether, if cost was the only issue and the process followed, the orders would have been jep'd. (You mentioned on the call that perhaps we had not authorized charges. As Jean and Bonnie have been discussing for a long time, the Qwest system does not allow the CLEC to authorize charges in this situation. Also, Teresa referred to a change in "charging." We couldn't address new charges before we even knew that such a change had occurred.

The other piece that still seems outstanding is what was the "change" referred to in Teresa's email. Teresa said: "Qwest has in the past not fully enforced our contractual right to collect on the charges incurred when completing DS1 level unbundled services. Charging is the specific change that has occurred"

I appreciate your reference to ICB language, so I know that it what Qwest views as the rate. Equally important, however, is when Qwest will apply that rate/ICB process (and how that has changed). What steps is Qwest charging for now that Qwest did not charge for when "not fully" enforcing its rights? If I missed this in your email, I apologize. It seems to be a statement of the Qwest SGAT/policy but not a discussion of the change. To start looking for these charges resulting from a "fully enforced" policy so we can analyze whether we agree with them, we need to understand what they are and how we will recognize them. (If the answer is that we need to "authorize" them as a result of increased jeps, see note above regarding authorization.) We just really need to understand what the change was. We have asked for a copy of the text of the MCCs sent out at Qwest and still hope to receive that information. Perhaps it will help in this regard.

We'll review it internally, and then we can talk on Monday.

Thanks,  
Karen

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, July 14, 2003 11:42 AM  
**To:** 'Dubuque, Toni'  
**Cc:** Johnson, Bonnie J.  
**Subject:** RE: DS1 Capable loop discussion (with enclosure)

I suppose it would help if I include the enclosure. . . Here it is.

## Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) –V5.0

[History Log](#) (*Link italicized text to: Attach Download CRUNEC History Log.doc*)

### Description

Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) provides a method where you may request Qwest to construct new facilities for utilizing Qwest's Unbundled Network Element (UNE) facilities. CRUNEC is not required for requests that can be resolved through facility work or assignments, such as:

- Line and Station Transfers (LSTs): Moving a end-user's line to a spare facility and reusing the pair made spare to provision a service request. An LST is not used in a "reverse cut" fashion; Qwest does not swap two working end-user lines to provision a service request.
- Cable Throws (also known as Section Throws or Plant Rearrangements): Moving existing end-users from their existing facilities to another set of facilities in order to free up the original facility for use in the provision of a Company Initiated Activity (CIA) (e.g., to place Digital Loop Carriers or modernize a terminal).
- Incremental Facility Work: Completing facilities to an end-user's premises (e.g., Place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal).
- Outside Plant construction jobs in progress or Engineering Work Orders in progress.

Qwest's CRUNEC applies to the following Wholesale products and services:

- [Enhanced Extended Loop \(EEL\)](http://www.qwest.com/wholesale/pcat/eel.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/eel.html>)
- [Loop MUX Combination \(LMC\)](http://www.qwest.com/wholesale/pcat/lmc.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/lmc.html>)
- [Sub-Loop](http://www.qwest.com/wholesale/pcat/subloop.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/subloop.html>)
- [Unbundled Dark Fiber \(UDF\)](http://www.qwest.com/wholesale/pcat/darkfiber.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/darkfiber.html>)
- [Unbundled Dedicated Interoffice Transport \(UDIT\)](http://www.qwest.com/wholesale/pcat/udit.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/udit.html>)
- [Unbundled Local Loop](http://www.qwest.com/wholesale/pcat/unloop.html) (Link blue text to: <http://www.qwest.com/wholesale/pcat/unloop.html>)
- [Unbundled Network Elements-Platform \(UNE-P\)](http://www.qwest.com/wholesale/pcat/unep.html) (link blue text to: <http://www.qwest.com/wholesale/pcat/unep.html>)

For specific information regarding the above products and services refer to the individual Product Catalog (PCAT).

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## Availability

CRUNEC is available throughout [Qwest's 14-state local service territory](#) within Qwest's exchange boundaries limited by various stipulations including, but not limited to governmental or jurisdictional restrictions. (Link blue text to: <http://www.qwest.com/wholesale/pcat/territory.html>)

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## Terms and Conditions

- To initiate facility construction work, you must submit a CRUNEC request. Such requests will be evaluated on an Individual Case Basis (ICB). You will be responsible for any construction charges that a Qwest retail end-user would be responsible for paying.

State specific Terms and Conditions may apply refer to state specific Regulatory Agencies identified in [Regulatory Commissions and Telecommunications Associations](#) (Link blue text to: <http://www.qwest.com/wholesale/clecs/rcta.html>) for information.

When you order the same or substantially similar service available to Qwest retail end-users, Qwest will not charge for CRUNEC where such charges are not provided in [the state specific Tariffs/Catalogs/Price Lists](#) (Link blue text to: <http://tariffs.qwest.com:8000/>) or where such charges would not be applied to a Qwest retail end-user.

Qwest bills for CRUNEC only when facilities, which would not otherwise be constructed by Qwest, are being constructed solely upon your request, or when you request construction involving a timeline that is shorter than defined by Qwest.

If at any time during the CRUNEC process you miss the critical timeframes, you must restart the process by submitting a new service request for the UNE being ordered.

## Technical Publications

Technical characteristics for the product supported by the UNE for which you are requesting CRUNEC are described in the [Technical Publications section of the product specific PCAT](#).

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## Pricing

### Rate Structure

Nonrecurring charges are comprised of the following rate elements:

- Quote Preparation Fee (QPF)/Quote Preparation Fee for Simple Facility Rearrangements (QPFS)CRUNEC Quote

The QPF/QPFS is a nonrecurring charge assessed prior to preparing the CRUNEC quote. A credit for the QPF/QPFS will be applied to the cost of construction if you accept the quoted CRUNEC price.

The QPFS will be required when a facility can be provided by simple means. A simple facility rearrangement consists of a combination of one or more of the following:

- Redirecting pairs to the requested address that can be used to provide the requested facility. Placement of an additional apparatus case for services needing repeaters will not be included as a simple facility rearrangement.
- Removing fewer than four load coils
- Removing bridged tap as required for requested facility
- Placing a repeater card in existing apparatus case
- Changing slots for an existing repeater card in an existing apparatus case

Qwest retains the QPF/QPFS if you choose not to proceed with the construction. At any point after remitting the payment for the CRUNEC Quote, you decide to discontinue the construction, Qwest will refund your payment, excluding expenditures already incurred for the Engineered, Furnished and Installed (EF&I) of the requested UNE and the QPF/QPFS, with a brief description of the work completed. Contact your [Qwest Service Manager](#) to cancel the construction. (link blue text to: <http://www.qwest.com/wholesale/clecs/accountmanagers.html>)

The CRUNEC quote amount to be billed will be determined using the same financial analysis criteria Qwest uses to assess whether to build for itself. This includes the cost to recover for EF&I and is determined by a process parallel with that used to price the equivalent Qwest retail construction. EF&I is defined as:

- Engineering labor to analyze the needs for the requested UNE and design and issue the required work orders
- Furnished material cost
- Installation labor costs to complete the work order

Qwest uses current EF&I cost including, but not limited to material and supplies, engineering, supervision and labor, overhead expenses for construction operations, cost incurred due to unusual conditions, and property owner and governmental requirements (e.g., Rights-of-Way, moratoriums, environmental studies).

## Rates

Rates are available in Exhibit A or the specific rate sheet in your Interconnection Agreement.

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## Tariffs, Regulations and Policies

Tariffs, regulations and policies are located in the state specific [Tariffs/Catalogs/Price Lists](#). (Link blue text to: <http://tariffs.qwest.com:8000/>)

When facilities are not available, Qwest will build facilities dedicated to an end-user if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. In other situations, Qwest does not agree that it is obligated to build UNEs, but will consider requests to build UNEs pursuant to Section 9.19 (or Section 9.20 as may apply) of the appropriate state [Statement of Generally Acceptable Terms and Conditions \(SGAT\)](#) (Link blue text to: <http://www.qwest.com/about/policy/sgats>) with exceptions that may apply where Commission Orders or State Requirements exist. The CRUNEC process is how Qwest implements the requirements outlined in Section 9.19 (or Section 9.20). Nothing in this PCAT shall be construed as modifying Qwest obligations under the SGAT.

Network elements will not be built if it is determined that the requested element will jeopardize the reliability of Qwest's existing network, endanger Qwest's employees or consumers, is not consistent with the National Electrical Code (NEC), or does not meet Network Equipment Building Standards (NEBS) requirements. All quotes will be based on Qwest's approved facilities, materials and vendors.

If Qwest constructs a network element that satisfies the Federal Communications Commission (FCC) description of a UNE, a facility or equipment used in the provision of telecommunications service, that network element shall be deemed a UNE. Once the facility is constructed, Qwest retains ownership and responsibility for administration and maintenance of the facility.

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## Implementation

### Prerequisites

To request CRUNEC, your Interconnection Agreement must contain the appropriate construction language or you must amend your Interconnection Agreement prior to placing a request for CRUNEC. Information regarding amending your Interconnection Agreement, information is located in the [Negotiations Template Agreement](#). (Link blue text to: <http://www.qwest.com/wholesale/clecs/negotiations.html>)

### Ordering

When you submit a service request for EEL, LMC, Sub-Loop, Unbundled Local Loop, UNE-P, UDF or UDIT products or services, the process used to determine if facilities are available is equivalent to the process used to determine if assignable facilities exist for Qwest retail services. This includes checking for:

- Spare or partially connected facilities
- Disconnect orders
- LSTs
- Outside Plant construction jobs in progress or Engineering Work Orders in progress.

If facilities are not available, your service request will be returned to you with a message indicating facilities are not available and to contact your Qwest [Service Manager](#) for options. (Link blue text to: <http://www.qwest.com/wholesale/clecs/accountmanagers.html>)

If you choose to initiate CRUNEC, you will need to complete a two-step process then resubmit your service request. Prior to the completion the QPF/QPFS contract, Qwest will review your request and provide a determination of whether the QPF or the QPFS fee applies. The first step includes the Quote Preparation Fee (QPF)/Quote Preparation Fee for Simple Facility Rearrangements (QPFS) contract and the second step includes the CRUNEC contract.

The first step requires you to complete the following:

- Contact your Qwest Service Manager to have a QPF/QPFS contract sent to you. When requesting the QPF/QPFS contract you will need to provide the following information to your Qwest Service Manager:
- CLEC name
- Contact name
- Contact telephone number

- Billing address
- Fax number
- Contact email address
- A QPF/QPFS contract will be generated by the Qwest Billing and Receivable Tracking (BART) system and sent to you. The QPF/QPFS contract includes terms and conditions, the QPF/QPFS and a Billing Account Number (BAN). To accept the QPF/QPFS contract, return the signed QPF/QPFS contract and full QPF/QPFS payment, within 30 business days. In addition, contact your Qwest Service Manager and provide the following information:
  - Type and quantity of UNE(s)
  - Address of requested UNE(s), city, county, state.
  - Common Language Location Identification (CLLI™) code of Serving CO
  - CLLI code of End CO
  - Brief description of UNE(s) requested

If you do not remit the full QPF/QPFS payment along with the original signed contract, a CRUNEC quote will not be provided.

Within 20 business days of receiving your signed QPF/QPFS contract and full QPF/QPFS payment, the CRUNEC quote will be emailed to you and your Qwest Service Manager. The CRUNEC quote contains a breakdown of labor and material costs along with a brief description of work (e.g., place card in apparatus case in a manhole, place 2,500 feet of cable).

The second step requires you to complete the following:

- After reviewing the CRUNEC quote, if you choose to accept the quote, you must contact your Qwest Service Manager within the timeframe as defined in your Interconnection Agreement and request a CRUNEC contract to be sent to you. If you do not have a timeframe defined in your Interconnection Agreement you have 90 business days from the day the CRUNEC quote was emailed to you to respond or the CRUNEC quote is invalid. To restart the process, submit a new service request for the UNE being ordered.
- When you receive the CRUNEC contract you have 30 business days to return the signed CRUNEC contract and the full payment identified in the CRUNEC quote or the CRUNEC contract is cancelled. An estimated Ready for Service Date will be provided within five business days after Qwest's Engineering is notified the signed CRUNEC contract and full CRUNEC payment was received. Contact your Qwest Service Manager if you have questions and be prepared to provide your BAN number found on the CRUNEC contract.

When you accept the CRUNEC quote, you must resubmit your service request and associate it with the CRUNEC by completing the following fields on the Local Service Request (LSR) or Access Service Request (ASR) form:

- In the MANUAL IND field Include a 'Y'
- In REMARKS include the BAN found on your CRUNEC contract

Failure to provide the above information limits Qwest's ability to associate your requested UNE with the constructed facility.

The following table provides additional assistance in determining the activities, timeframes and deliverables required for CRUNEC:



<b>CRUNEC Activities</b>	<b>Responsible Party</b>	<b>Timeframes</b>	<b>Required Deliverable</b>
<b>QPF/QPFS Contract Request</b>	CLEC and Qwest Service Manager	Not applicable	<ul style="list-style-type: none"> <li>• Name of CLEC</li> <li>• Contact name</li> <li>• Contact telephone number, Fax number, and email address</li> <li>• Billing address</li> </ul>
<b>Delivery of the QPF/QPFS Contract</b>	Qwest BART	Not applicable	<ul style="list-style-type: none"> <li>• QPF/QPFS Contract</li> </ul>
<b>QPF/QPFS Contract Acceptance</b>	CLEC	30 business days *	<ul style="list-style-type: none"> <li>• Signed QPF/QPFS contract</li> <li>• Full QPF/QPFS payment</li> <li>• Type and quantity of UNE(s)</li> <li>• Address of requested UNE(s), city, county, state.</li> <li>• CLLI code of Serving CO</li> <li>• CLLI code of End CO</li> <li>• Brief description of UNE(s) requested</li> </ul>
<b>Delivery of CRUNEC Quote</b>	Qwest	20 business days after QPF/QPFS Contract Acceptance.	<ul style="list-style-type: none"> <li>• CRUNEC quote</li> </ul>
<b>CRUNEC Quote Acceptance</b>	CLEC	Interval as defined in your Interconnection Agreement. If not defined, the interval is 90 business days *	<ul style="list-style-type: none"> <li>• Notification to Qwest Service Manager</li> </ul>
<b>CRUNEC Contract Acceptance</b>	CLEC	30 business days *	<ul style="list-style-type: none"> <li>• Signed CRUNEC contract</li> <li>• Full CRUNEC quote payment.</li> </ul>
<b>Resubmit the service request</b>	CLEC	Recommended to resubmit the service request at the same time you return the signed CRUNEC contract and full CRUNEC quote payment.	<ul style="list-style-type: none"> <li>• Resubmit the LSR or ASR</li> <li>• in the MANUAL IND field Include a 'Y'</li> <li>• In REMARKS include the (BAN) found on your CRUNEC contract</li> </ul>
<b>Estimated Ready for Service Date</b>	Qwest Service Manager	5 business days after Qwest Engineering is notified signed CRUNEC contract and full CRUNEC payment was received.	<ul style="list-style-type: none"> <li>• Estimated Ready for Service Date</li> </ul>
<b>Construction</b>	Qwest	ICB	<ul style="list-style-type: none"> <li>• Completed Construction</li> </ul>

\* If you do not provide the deliverables identified in the table above in the specified timeframe you must restart the process by submitting a new service request for the UNE being ordered.

For information about delayed service request handling information can be found in the [Ordering Overview](http://www.qwest.com/wholesale/clecs/ordering.html). (Link blue text to: <http://www.qwest.com/wholesale/clecs/ordering.html>)

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## Provisioning and Installation

General provisioning and installation activities are described in the [Provisioning and Installation Overview](http://www.qwest.com/wholesale/clecs/provisioning.html). (Link blue text to: <http://www.qwest.com/wholesale/clecs/provisioning.html>)

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## Billing

Billing and Receivable Tracking (BART) billing is described in [Billing Information - Billing and Receivable Tracking \(BART\)](http://www.qwest.com/wholesale/clecs/bart.html). (Link blue text to: <http://www.qwest.com/wholesale/clecs/bart.html>)

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## Training

### Qwest 101: “Doing Business with Qwest”

- This introductory instructor-led training course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest billing and support systems, processes for submitting service requests, reports, and web resource access information. [Click here to learn more about this course and to register](http://www.qwest.com/wholesale/training/ilt_desc_qwest_101.html). (Link blue text to: [http://www.qwest.com/wholesale/training/ilt\\_desc\\_qwest\\_101.html](http://www.qwest.com/wholesale/training/ilt_desc_qwest_101.html))

View additional Qwest courses by clicking on [Course Catalog](http://www.qwest.com/wholesale/training/coursecatalog.html). (Link blue text to: <http://www.qwest.com/wholesale/training/coursecatalog.html>)

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## Contacts

Qwest contact information is available in the [Wholesale Customer Contacts](http://www.qwest.com/wholesale/clecs/escalations.html). (List blue text to: <http://www.qwest.com/wholesale/clecs/escalations.html>)

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## Frequently Asked Questions (FAQs)

### 1. Can an estimate of possible construction charges be obtained prior to submitting a CRUNEC request?

No. Estimated pricing will not be available prior to the assessment and payment of the QPF/QPFS.

### 2. What happens if a CLEC cancels CRUNEC in the middle of construction being performed?

You are responsible for the already incurred EF&I cost for the work completed. Should you chose to discontinue the CRUNEC work, Qwest will refund your payment, excluding expenditures

already incurred for the EF&I of the requested service and the QPF/QPFS, with a brief description of the work completed.

**3. Are previous Dark Fiber Initial Record Inquiry (IRI) fees refunded if a CLEC goes through CRUNEC for additional facility placing?**

No. You are requesting a separate process as a result of a previous fiber inquiry request field verification not finding facilities.

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**Last Update: August 25, 2003**

CLLI™ is a Trademark of Telecordia Technologies, Inc.

META Tags: Special Construction; Facilities Not Available, EEL, Enhanced Extended Loop, UDF, Unbundled Dark Fiber, UBL, Unbundled Local Loop, UDIT, Unbundled Dedicated Interoffice Transport, LMC, Loop MUX Combination, Sub-Loop, CRUNEC, EF&I, LST, Cable Throws, POLR, Fiber Based Facilities, Copper Based Facilities, UNE Construction, Incremental Facility Work, QPF, Construction Quote Preparation Fee, Quote Preparation Fee, CRUNEC process, CLEC Requested UNE Construction,

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, July 14, 2003 11:41 AM  
**To:** 'Dubuque, Toni'  
**Cc:** Johnson, Bonnie J.  
**Subject:** RE: DS1 Capable loop discussion

Toni, we would like to know how the enclosed document relates to the discussions below, if at all. In particular, how is "rearrangement of facilities" defined, and how is this different from "incremental facility work"? We don't see the difference. Also, where in the tariff does Qwest charge Retail end users for these costs? (If you need to forward this email to someone else at Qwest for a response, please do so, and let me know whom I should be dealing with. We just need to be able to fit it into the discussions we have had so far, so we know if/how it relates.)

I didn't realize that I have a seminar out of the office today, so I won't be able to call you today. If you can either email me with info on these questions (and those below), or call me when you want to discuss this week, that would be great. Thanks.

-----Original Message-----

**From:** Dubuque, Toni [SMTP:Toni.Dubuque@qwest.com]  
**Sent:** Wednesday, July 16, 2003 10:45 AM  
**To:** 'klclauson@eschelon.com'  
**Subject:** DS1

Karen,

I am doing an Operations review in Duluth today so here is what I have to share. We can set up time on Friday to visit but hopefully, this is about all I have on this subject.

I'm not sure what additional clarification I can provide on the jeopardy notice process. When a facility is not available Qwest will issue a jeopardy notice to inform the CLEC of the status. It is that process that Joan was explaining in her emails.

In terms of the discussion between Rick and Teresa, I was not at that meeting but believe the emails you have received from Joan and I fully explain what has taken place; the modification of the CRUNEC, and the associated costs for CRUNEC. The charges that apply to a DS1 when facilities are not available are the charges under CRUNEC if a CLEC elects this option.

Rearrangement of facilities is typically a section throw, cable throw, or a pair change. It is not incremental work and therefore is defined differently. Incremental work applies when a DS1 capable loop exists and there is no redirection of the network.

Qwest's Wholesale policies are in parity with our Retail business. The tariffs are public information and are available to you. In looking at your delayed orders, I do not see any significant change. From January to June your delayed orders for DS1 capable loops including EEL range from the mid 70's to mid 80's with a low of 59 in May. June appears to fit in the range of other months. In looking at the specific LSRs you provided each of these were delayed due to no existing DS1 capable facility.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Wednesday, July 16, 2003 6:45 PM  
**To:** 'Dubuque, Toni'  
**Cc:** Johnson, Bonnie J.; Masztaler, Joan  
**Subject:** DS1

Toni:

You may get this message twice. I hit send before quite finishing it and recalled it to complete it. Here is the complete note (with the last couple of sentences added).

I am free on Friday if you would like to discuss. I have a meeting at 10am but otherwise look pretty free. Let me know what works for you, if you think a discussion would be helpful.

We do not believe that our questions have been answered. You and Joan have summarized current policy, but you have not addressed our questions about the "the specific change that has occurred" (past tense) described by Teresa. Teresa's email was sent on July 3rd and referred to a change that had already occurred. Eschelon (as well as CBeyond and others) felt the impact of that change with the increase in jep notices. We brought the issue to Qwest, because it was clear something had changed. The CRUNEC change that you are referring to wasn't even noticed until after COB this Friday (7/11), and the comment period hasn't even expired yet. Are you saying that Qwest had already implemented that change?

Regarding the CRUNEC process proposed in the 7/11 notice, the notice provides insufficient detail for us to understand why orders are jep'd and for which activities Qwest will charge. We asked for a definition of "facilities reassignment" and you provided a few examples. Is there documentation of the facilities reassignment activities for which you plan to charge? If not, will you provide a list of activities (like the level of detail in the description of activities in the 11-step process, only this would be the activities that you consider to be facilities reassignment steps for which Qwest plans to charge).

We do not agree with your statement that Qwest can charge for a pair change, for example, because this is somehow a "build." Qwest does not charge its retail customers when it changes pairs to free facilities; so it cannot charge us. See, e.g., AZ ICA, Att. 1, paragraph 3.1. When we asked you to show us that you do charge retail customers, you responded that we should read the tariff. We don't find any evidence in the tariff that you charge retail customers these charges.

We still want Qwest to take another look at the list of orders we provided to you. For each, please state the facilities problem that lead to the jep notice, such as whether in that particular case it was a pair change, etc., that was needed. (Some notices say but others do not.) Please state what steps would have been taken by Qwest in the past with respect to facilities (in the situations that you said in our conversation that Qwest's employees were acting out of process) and whether those steps, if taken now, would have resulted in the processing of the orders (and whether they would result in a charge). This exercise would be helpful in understanding the change Qwest has made.

We have also asked Qwest to provide the text of the MCCs sent to its employees on this issue. If you have responded to that request, I missed it.

You state that you have looked at our "delayed orders." Qwest sends jep notices on a very wide variety of issues. As you know, we are talking here specifically about the service inquiry notices. Within this category, the number jumped.

We have comments due in AZ 271 on Friday, and we'll raise this issue there. The PUC may deal with it in that case or the next phase of the cost case. We will have to get the information in discovery if Qwest does not want to provide it informally. We hope that there is more we can do informally, however. Let me know if you believe there is and would like to discuss.

-----Original Message-----

**From:** Dubuque, Toni [SMTP:Toni.Dubuque@qwest.com]  
**Sent:** Friday, July 18, 2003 10:47 AM  
**To:** 'klclauson@eschelon.com'  
**Cc:** Masztaler, Joan  
**Subject:** Reply

Karen,

I am sorry to reply to this so late but I just converted to Outlook and lost some email messages. Yours was one of those. I am not sure that a meeting will be of any benefit to us as I believe we have answered to the best of our ability all of the questions that you have asked. Let me clarify a couple of points that you addressed in your last email.

The CRUNEC change that I referenced is the one that went into eff on 6-16-03.

### **PROS.04.30.03.F.01071.CRUNEC**

Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) provides a method where you may request Qwest to construct new facilities for utilizing Qwest's Unbundled Network Element (UNE) facilities. CRUNEC is not required for requests that can be resolved through facility work or assignments, such as:

- Line and Station Transfers (LSTs): Moving a end-user's line to a spare facility and reusing the pair made spare to provision a service request. An LST is not used in a "reverse cut" fashion; Qwest does not swap two working end-user lines to provision a service request.
- Cable Throws (also known as Section Throws or Plant Rearrangements): Moving existing end-users from their existing facilities to another set of facilities in order to free up the original facility for use in the provision of a Company Initiated Activity (CIA) (e.g., to place Digital Loop Carriers or modernize a terminal).
- Incremental Facility Work: Completing facilities to an end-user's premises (e.g., ~~Conditioning,~~ ~~place~~ Place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal).
- Outside Plant construction jobs in progress or Engineering Work Orders in progress.

There is another change in progress and that is different than this one.

As you know, our policy is not to share internal documentation with customers. The MCC would have included the information denoted above.

We believe the current list of orders that are in held status are the ones that would need further action by Eschelon to process. Again, it would be up to you to determine which option you would want to select, ie, cancel, order Private Line, use CRUNEC process.

I believe we have made every communication attempt to clarify this subject and have dealt with this informally.

*Toni Dubuque*  
*612-288-3831*  
*800-472-6976 pager*

-----Original Message-----

**From:** Clauson, Karen L.

**Sent:** Friday, July 18, 2003 10:55 AM  
**To:** 'Dubuque, Toni'  
**Cc:** Masztaler, Joan  
**Subject:** RE: Reply

Thanks for the message. As you know, we disagree. Appreciate the response.

## **E-II (CRUNEC Notice, V.5)**

### **EXHIBIT E-II**

## **Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) –V5.0**

*History Log (Link [italicized text to: Attach Download CRUNEC History Log.doc](#))*

### **Description**

Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) provides a method where you may request Qwest to construct new facilities for utilizing Qwest's Unbundled Network Element (UNE) facilities. CRUNEC is not required for requests that can be resolved through facility work or assignments, such as:

Line and Station Transfers (LSTs): Moving a end-user's line to a spare facility and reusing the pair made spare to provision a service request. An LST is not used in a "reverse cut" fashion; Qwest does not swap two working end-user lines to provision a service request.

Cable Throws (also known as Section Throws or Plant Rearrangements): Moving existing end-users from their existing facilities to another set of facilities in order to free up the original facility for use in the provision of a Company Initiated Activity (CIA) (e.g., to place Digital Loop Carriers or modernize a terminal).

Incremental Facility Work: Completing facilities to an end-user's premises (e.g., Place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal).

Outside Plant construction jobs in progress or Engineering Work Orders in progress.

Qwest's CRUNEC applies to the following Wholesale products and services:

- **Enhanced Extended Loop (EEL)** (Link blue text to: <http://www.qwest.com/wholesale/pcat/eel.html>)
- Loop MUX Combination (LMC)** (Link blue text to: <http://www.qwest.com/wholesale/pcat/lmc.html>)
- Sub-Loop** (Link blue text to: <http://www.qwest.com/wholesale/pcat/subloop.html>)
- Unbundled Dark Fiber (UDF)** (Link blue text to: <http://www.qwest.com/wholesale/pcat/darkfiber.html>)
- Unbundled Dedicated Interoffice Transport (UDIT)** (Link blue text to: <http://www.qwest.com/wholesale/pcat/udit.html>)
- Unbundled Local Loop** (Link blue text to: <http://www.qwest.com/wholesale/pcat/unloop.html>)
- Unbundled Network Elements-Platform (UNE-P)** (link blue text to: <http://www.qwest.com/wholesale/pcat/unep.html>)

For specific information regarding the above products and services refer to the individual Product Catalog (PCAT).

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### **Availability**

CRUNEC is available throughout **Qwest's 14-state local service territory** within Qwest's exchange boundaries limited by various stipulations including, but not limited to



governmental or jurisdictional restrictions. (Link blue text to: <http://www.qwest.com/wholesale/pcat/territory.html>)

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## Terms and Conditions

To initiate facility construction work, you must submit a CRUNEC request. Such requests will be evaluated on an Individual Case Basis (ICB). You will be responsible for any construction charges that a Qwest retail end-user would be responsible for paying.

State specific Terms and Conditions may apply refer to state specific Regulatory Agencies identified in [Regulatory Commissions and Telecommunications Associations](http://www.qwest.com/wholesale/clecs/rcta.html) (Link blue text to: <http://www.qwest.com/wholesale/clecs/rcta.html>) for information.

When you order the same or substantially similar service available to Qwest retail end-users, Qwest will not charge for CRUNEC where such charges are not provided in [the state specific Tariffs/Catalogs/Price Lists](http://tariffs.qwest.com:8000/) (Link blue text to: <http://tariffs.qwest.com:8000/>) or where such charges would not be applied to a Qwest retail end-user.

Qwest bills for CRUNEC only when facilities, which would not otherwise be constructed by Qwest, are being constructed solely upon your request, or when you request construction involving a timeline that is shorter than defined by Qwest.

If at any time during the CRUNEC process you miss the critical timeframes, you must restart the process by submitting a new service request for the UNE being ordered.

## Technical Publications

Technical characteristics for the product supported by the UNE for which you are requesting CRUNEC are described in the [Technical Publications section of the product specific PCAT](#).

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## Pricing

### Rate Structure

Nonrecurring charges are comprised of the following rate elements:

- Quote Preparation Fee (QPF)/Quote Preparation Fee for Simple Facility Rearrangements (QPFS)CRUNEC Quote

The QPF/QPFS is a nonrecurring charge assessed prior to preparing the CRUNEC quote. A credit for the QPF/QPFS will be applied to the cost of construction if you accept the quoted CRUNEC price.

The QPFS will be required when a facility can be provided by simple means. A simple facility rearrangement consists of a combination of one or more of the following:

Redirecting pairs to the requested address that can be used to provide the requested facility.

Placement of an additional apparatus case for services needing repeaters will not be included as a simple facility rearrangement.

Removing fewer than four load coils

Removing bridged tap as required for requested facility  
Placing a repeater card in existing apparatus case  
Changing slots for an existing repeater card in an existing apparatus case

Qwest retains the QPF/QPFS if you choose not to proceed with the construction. At any point after remitting the payment for the CRUNEC Quote, you decide to discontinue the construction, Qwest will refund your payment, excluding expenditures already incurred for the Engineered, Furnished and Installed (EF&I) of the requested UNE and the QPF/QPFS, with a brief description of the work completed. Contact your [Qwest Service Manager](#) to cancel the construction. (link blue text to: <http://www.qwest.com/wholesale/clecs/accountmanagers.html>)

The CRUNEC quote amount to be billed will be determined using the same financial analysis criteria Qwest uses to assess whether to build for itself. This includes the cost to recover for EF&I and is determined by a process parallel with that used to price the equivalent Qwest retail construction. EF&I is defined as:

Engineering labor to analyze the needs for the requested UNE and design and issue the required work orders  
Furnished material cost  
Installation labor costs to complete the work order

Qwest uses current EF&I cost including, but not limited to material and supplies, engineering, supervision and labor, overhead expenses for construction operations, cost incurred due to unusual conditions, and property owner and governmental requirements (e.g., Rights-of-Way, moratoriums, environmental studies).

## Rates

Rates are available in Exhibit A or the specific rate sheet in your Interconnection Agreement.

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## Tariffs, Regulations and Policies

Tariffs, regulations and policies are located in the state specific [Tariffs/Catalogs/Price Lists](#). (Link blue text to: <http://tariffs.qwest.com:8000/>)

When facilities are not available, Qwest will build facilities dedicated to an end-user if Qwest would be legally obligated to build such facilities to meet its Provider of Last Resort (POLR) obligation to provide basic Local Exchange Service or its Eligible Telecommunications Carrier (ETC) obligation to provide primary basic Local Exchange Service. In other situations, Qwest does not agree that it is obligated to build UNEs, but will consider requests to build UNEs pursuant to Section 9.19 (or Section 9.20 as may apply) of the appropriate state [Statement of Generally Acceptable Terms and Conditions \(SGAT\)](#) (Link blue text to: <http://www.qwest.com/about/policy/sgats>) with exceptions that may apply where Commission Orders or State Requirements exist. The CRUNEC process is how Qwest implements the requirements outlined in Section 9.19 (or Section 9.20). Nothing in this PCAT shall be construed as modifying Qwest obligations under the SGAT.

Network elements will not be built if it is determined that the requested element will jeopardize the reliability of Qwest's existing network, endanger Qwest's employees or consumers, is not consistent with the National Electrical Code (NEC), or does not meet Network Equipment Building Standards (NEBS) requirements. All quotes will be based on Qwest's approved facilities, materials and vendors.

If Qwest constructs a network element that satisfies the Federal Communications Commission (FCC) description of a UNE, a facility or equipment used in the provision of telecommunications service, that network element shall be deemed a UNE. Once the facility is constructed, Qwest retains ownership and responsibility for administration and maintenance of the facility.

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## Implementation

### Prerequisites

To request CRUNEC, your Interconnection Agreement must contain the appropriate construction language or you must amend your Interconnection Agreement prior to placing a request for CRUNEC. Information regarding amending your Interconnection Agreement, information is located in the [Negotiations Template Agreement](#). (Link blue text to: <http://www.qwest.com/wholesale/clecs/negotiations.html>)

### Ordering

When you submit a service request for EEL, LMC, Sub-Loop, Unbundled Local Loop, UNE-P, UDF or UDIT products or services, the process used to determine if facilities are available is equivalent to the process used to determine if assignable facilities exist for Qwest retail services.

This includes checking for:

Spare or partially connected facilities

Disconnect orders

LSTs

Outside Plant construction jobs in progress or Engineering Work Orders in progress.

If facilities are not available, your service request will be returned to you with a message indicating facilities are not available and to contact your Qwest [Service Manager](#) for options. (Link blue text to: <http://www.qwest.com/wholesale/clecs/accountmanagers.html>)

If you choose to initiate CRUNEC, you will need to complete a two-step process then resubmit your service request. Prior to the completion the QPF/QPFS contract, Qwest will review your request and provide a determination of whether the QPF or the QPFS fee applies. The first step includes the Quote Preparation Fee (QPF)/Quote Preparation Fee for Simple Facility Rearrangements (QPFS) contract and the second step includes the CRUNEC contract.

The first step requires you to complete the following:

Contact your Qwest Service Manager to have a QPF/QPFS contract sent to you. When requesting the QPF/QPFS contract you will need to provide the following information to your Qwest Service Manager:

CLEC name

Contact name

Contact telephone number

Billing address

Fax number

Contact email address

A QPF/QPFS contract will be generated by the Qwest Billing and Receivable Tracking (BART) system and sent to you. The QPF/QPFS contract includes terms and conditions, the QPF/QPFS and a Billing Account Number (BAN). To accept the QPF/QPFS contract, return the signed QPF/QPFS contract and full QPF/QPFS payment, within 30 business days. In addition, contact your Qwest Service Manager and provide the following information:

Type and quantity of UNE(s)

Address of requested UNE(s), city, county, state.

Common Language Location Identification (CLLI™) code of Serving CO

CLLI code of End CO

Brief description of UNE(s) requested

If you do not remit the full QPF/QPFS payment along with the original signed contract, a CRUNEC quote will not be provided.

Within 20 business days of receiving your signed QPF/QPFS contract and full QPF/QPFS payment, the CRUNEC quote will be emailed to you and your Qwest Service Manager. The CRUNEC quote contains a breakdown of labor and material costs along with a brief description of work (e.g., place card in apparatus case in a manhole, place 2,500 feet of cable).

The second step requires you to complete the following:

After reviewing the CRUNEC quote, if you choose to accept the quote, you must contact your Qwest Service Manager within the timeframe as defined in your Interconnection Agreement and request a CRUNEC contract to be sent to you. If you do not have a timeframe defined in your Interconnection Agreement you have 90 business days from the day the CRUNEC quote was emailed to you to respond or the CRUNEC quote is invalid. To restart the process, submit a new service request for the UNE being ordered.

When you receive the CRUNEC contract you have 30 business days to return the signed CRUNEC contract and the full payment identified in the CRUNEC quote or the CRUNEC contract is cancelled. An estimated Ready for Service Date will be provided within five business days after Qwest's Engineering is notified the signed CRUNEC contract and full CRUNEC payment was received. Contact your Qwest Service Manager if you have questions and be prepared to provide your BAN number found on the CRUNEC contract.

When you accept the CRUNEC quote, you must resubmit your service request and associate it with the CRUNEC by completing the following fields on the Local Service Request (LSR) or Access Service Request (ASR) form:

In the MANUAL IND field Include a 'Y'

In REMARKS include the BAN found on your CRUNEC contract

Failure to provide the above information limits Qwest's ability to associate your requested UNE with the constructed facility.

The following table provides additional assistance in determining the activities, timeframes and deliverables required for CRUNEC:

CRUNEC Activities	Responsible Party	Timeframes	Required Deliverable
<b>QPF/QPFS Contract Request</b>	CLEC and Qwest Service Manager	Not applicable	Name of CLEC Contact name Contact telephone number, Fax number, and email

<b>CRUNEC Activities</b>	<b>Responsible Party</b>	<b>Timeframes</b>	<b>Required Deliverable</b>
			address Billing address
<b>Delivery of the QPF/QPFS Contract</b>	Qwest BART	Not applicable	QPF/QPFS Contract
<b>QPF/QPFS Contract Acceptance</b>	CLEC	30 business days *	Signed QPF/QPFS contract Full QPF/QPFS payment Type and quantity of UNE(s) Address of requested UNE(s), city, county, state. CLLI code of Serving CO CLLI code of End CO Brief description of UNE(s) requested
<b>Delivery of CRUNEC Quote</b>	Qwest	20 business days after QPF/QPFS Contract Acceptance.	CRUNEC quote
<b>CRUNEC Quote Acceptance</b>	CLEC	Interval as defined in your Interconnection Agreement. If not defined, the interval is 90 business days *	Notification to Qwest Service Manager
<b>CRUNEC Contract Acceptance</b>	CLEC	30 business days *	Signed CRUNEC contract Full CRUNEC quote payment.
<b>Resubmit the service request</b>	CLEC	Recommended to resubmit the service request at the same time you return the signed CRUNEC contract and full CRUNEC quote payment.	Resubmit the LSR or ASR in the MANUAL IND field Include a 'Y' In REMARKS include the (BAN) found on your CRUNEC contract
<b>Estimated Ready for Service Date</b>	Qwest Service Manager	5 business days after Qwest Engineering is notified signed CRUNEC contract and full CRUNEC payment was received.	Estimated Ready for Service Date
<b>Construction</b>	Qwest	ICB	Completed Construction

\* If you do not provide the deliverables identified in the table above in the specified timeframe you must restart the process by submitting a new service request for the UNE being ordered.

For information about delayed service request handling information can be found in the [Ordering Overview](http://www.qwest.com/wholesale/clecs/ordering.html). (Link blue text to: <http://www.qwest.com/wholesale/clecs/ordering.html>)

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## Provisioning and Installation

General provisioning and installation activities are described in the [Provisioning and Installation Overview](#). (Link blue text to: <http://www.qwest.com/wholesale/clecs/provisioning.html>)

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## Billing

Billing and Receivable Tracking (BART) billing is described in [Billing Information - Billing and Receivable Tracking \(BART\)](#). (Link blue text to: <http://qwest.com/wholesale/clecs/bart.html>)

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## Training

### Qwest 101: “Doing Business with Qwest”

This introductory instructor-led training course is designed to teach the CLEC and Reseller how to do business with Qwest. It will provide a general overview of products and services, Qwest billing and support systems, processes for submitting service requests, reports, and web resource access information. [Click here to learn more about this course and to register](#). (Link blue text to: [http://www.qwest.com/wholesale/training/ilt\\_desc\\_qwest\\_101.html](http://www.qwest.com/wholesale/training/ilt_desc_qwest_101.html))

View additional Qwest courses by clicking on [Course Catalog](#). (Link blue text to: <http://www.qwest.com/wholesale/training/coursecatalog.html>)

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## Contacts

Qwest contact information is available in the [Wholesale Customer Contacts](#). (List blue text to: <http://www.qwest.com/wholesale/clecs/escalations.html>)

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## Frequently Asked Questions (FAQs)

### 4. Can an estimate of possible construction charges be obtained prior to submitting a CRUNEC request?

No. Estimated pricing will not be available prior to the assessment and payment of the QPF/QPFS.

### 5. What happens if a CLEC cancels CRUNEC in the middle of construction being performed?

You are responsible for the already incurred EF&I cost for the work completed. Should you chose to discontinue the CRUNEC work, Qwest will refund your payment, excluding expenditures already incurred for the EF&I of the requested service and the QPF/QPFS, with a brief description of the work completed.

### 6. Are previous Dark Fiber Initial Record Inquiry (IRI) fees refunded if a CLEC goes through CRUNEC for additional facility placing?

No. You are requesting a separate process as a result of a previous fiber inquiry request field verification not finding facilities.

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**Last Update: August 25, 2003**

CLLI™ is a Trademark of Telecordia Technologies, Inc.

META Tags: Special Construction; Facilities Not Available, EEL, Enhanced Extended Loop, UDF, Unbundled Dark Fiber, UBL, Unbundled Local Loop, UDIT, Unbundled Dedicated Interoffice Transport, LMC, Loop MUX Combination, Sub-Loop, CRUNEC, EF&I, LST, Cable Throws, POLR, Fiber Based Facilities, Copper Based Facilities, UNE Construction, Incremental Facility Work, QPF, Construction Quote Preparation Fee, Quote Preparation Fee, CRUNEC process, CLEC Requested UNE Construction,

## **E-JJ (CRUNEC Notice, V.4)**

### **EXHIBIT E-JJ**

**Announcement Date:** April 30, 2003  
**Proposed Effective Date:** June 16, 2003

**Document Number:** PROS.04.30.03.F.01071.CRUNEC  
**Notification Category:** Process Notification  
**Target Audience:**

- CLEC, Resellers

**Subject:** CMP - Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) V4.0

**Level of Change:** Level 3  
**Associated CR Number or System Release Number:** Not Applicable

#### **Summary of Change:**

On April 30, 2003, Qwest will post planned updates to its Wholesale Product Catalog that include new/revised documentation for Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC) V4.0. These will be posted to the Qwest Wholesale Document Review Site located at <http://www.qwest.com/wholesale/cmp/review.html>.

Qwest is modifying/changing the existing manual process by removing conditioning as a limiting factor of the CRUNEC process as it relates to DS1 Capable Loops when facilities are not available.

Current operational documentation for this product or business procedure is found on the Qwest Wholesale Web Site at this URL: <http://www.qwest.com/wholesale/clecs/crunec.html>.

#### **Comment Cycle:**

CLEC customers are encouraged to review these proposed changes and provide comment at any time during the 15-day comment review period. Qwest will have up to 15 days following the close of the comment review to respond to any CLEC comments. This response will be included as part of the final notification. Qwest will not implement the change sooner than 15 days following the final notification.

Qwest provides an electronic means for CLEC customers to comment on proposed changes. The Document Review Web Site provides a list of all documents that are in the review stage, the process for CLECs to use to comment on documents, the submit comment link, and links to current documentation and past review documents. The Document Review Web Site is found at <http://www.qwest.com/wholesale/cmp/review.html>. Fill in all required fields and be sure to reference the Notification Number listed above.

#### **Timeline:**

Planned Updates Posted to Document Review Site	Available April 30, 2003
CLEC Comment Cycle on Documentation Begins	Beginning May 1, 2003
CLEC Comment Cycle Ends	5:00 PM, MT May 15, 2003
Qwest Response to CLEC Comments (if applicable)	Available May 30, 2003 <a href="http://www.qwest.com/wholesale/cmp/review_archive.html">http://www.qwest.com/wholesale/cmp/review_archive.html</a>



Proposed Effective Date	June 16, 2003
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If you have any questions on this subject, please submit comments though the following link:  
<http://www.qwest.com/wholesale/cmp/comment.html>.

Sincerely,

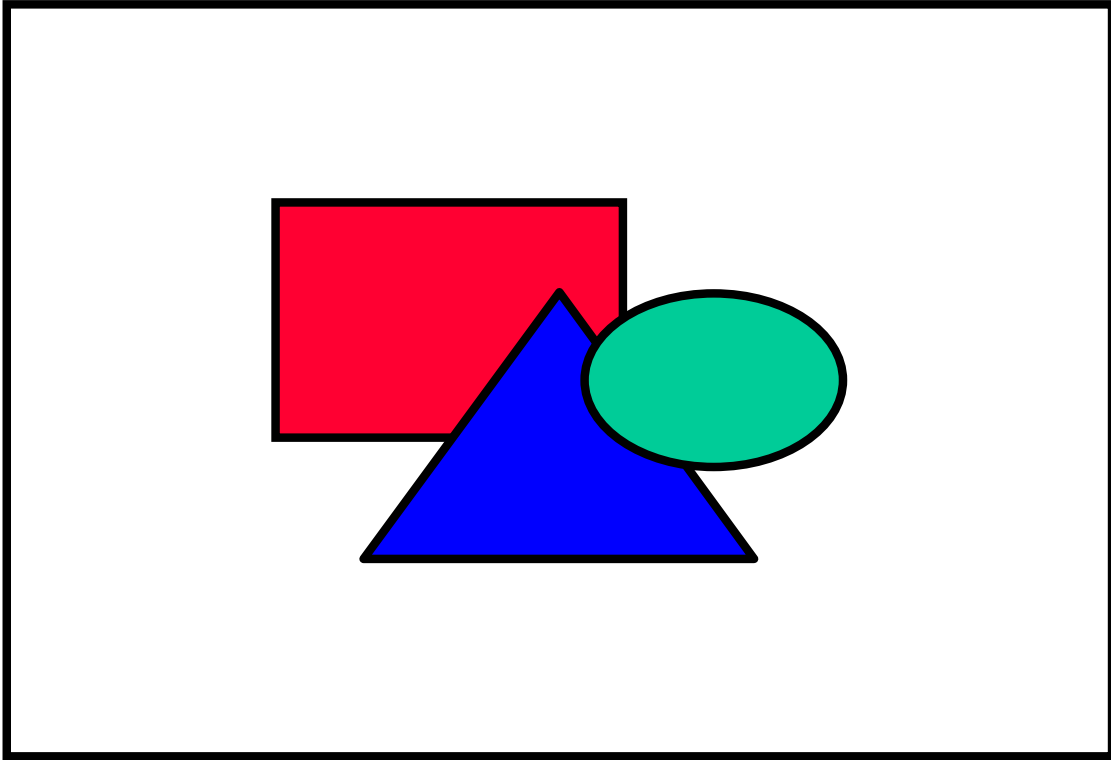
Qwest

## E-KK (Example One Chronology)

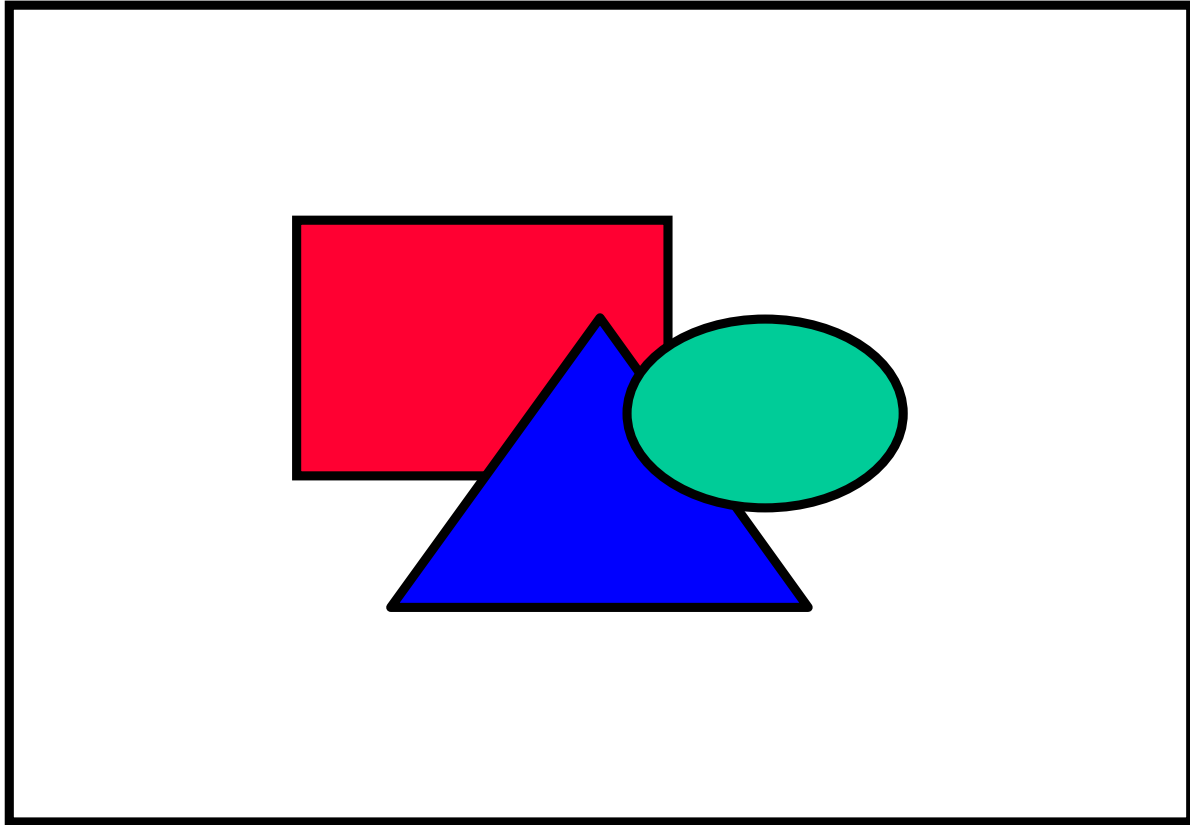
### EXHIBIT KK EXAMPLE ONE CHRONOLOGY

- Eschelon submitted PON UT293998T1FAC - LSR ID (local service request ID) 7097727 to Qwest on 6/5/03 and requested a due date of 6/16/03 to install a DS1 capable loop.
- Qwest sent Eschelon a LSRC (local service request confirmation) on 6/6/03 (1:22 PM). The LSRC contained:
  1. Qwest order number N21251158
  2. Qwest's provided ECCKT (circuit ID) of **69HCFU001599MS**.
  3. Qwest confirmed Eschelon's requested due date of 6/16/03 on the LSRC.
- Qwest sent Eschelon jeopardy notices on 6/11/03 (6:02 PM) and 6/13/03 (9:30 AM). The jeopardy notices both stated "Local Facility Defective" and the jeopardy notices contained no estimated due date.
- Qwest sent a LSRC on 6/13/03 (5:27 PM). Remarks on the LSRC state "Delayed order released and will make 6/16/03 due date"
- Qwest sent a Eschelon a jeopardy notice on 6/17/03 (1:13 PM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date.
- Qwest sent Eschelon a LSRC on 6/26/03 (6:56 PM). Remarks on the LSRC state "Order is released with 6/30/03 recommit date".
- Qwest sent a Eschelon a jeopardy notice on 6/30/03 (10:23 AM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date.
- Qwest sent Eschelon a LSRC on 7/2/03 (3:34 PM). Remarks on the LSRC state "Order is released with 7/8/03 recommit date".
- Qwest sent a Eschelon a jeopardy notice on 7/9/03 (10:19 AM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date.
- Qwest sent Eschelon a LSRC on 7/16/03 (11:20 AM). Remarks on the LSRC state "Order is released with 7/21/03 recommit date".
- Qwest sent a Eschelon a jeopardy notice on 7/22/03 (1:20 PM) The jeopardy notice stated "Local Facility Defective" and the jeopardy notices contained no estimated due date. ***Comments read "Service Inquiry-no qualified facilities available".***
- Because Eschelon had received a LSRC with a committed due date of 7/21/03 previously, Eschelon had scheduled a technician dispatch for 7/23/03. Due to the shortness of time between notices, Eschelon had not stopped its internal process and canceled the dispatch by the Eschelon technician. Therefore, Eschelon dispatched a technician to the customer location on 7/23/03 (12:00 PM local time). The Eschelon technician found the circuit installed and tagged with the circuit ID at the customer premise. Circuit ID is the same (**69HCFU001599MS**) as on the LSRC. Because the Eschelon technician did not know the order was held, the technician performed routine procedures (test calls, surfing, etc.) to ensure the circuit was working for voice and data.
- On 7/23/03, while at the customer premise, the Eschelon technician followed routine procedures and called Eschelon to close out the order. Only then did the Eschelon technician learn that, according to Qwest, no facilities were available, when in fact the facility was installed and working.

**E-LL (Photo of Circuit ID#)**



Ex. MM (Photo of NIU)



## **Ex. NN (Example Two Chronology)**

### **EXHIBIT NN** **EXAMPLE TWO CHRONOLOGY**

- Eschelon submitted PON WA302307T1FAC - LSR ID (local service request ID) 7322890 to Qwest on 7/8/03 and requested a due date of 7/23/03 to install a DS1 capable loop.
- Qwest sent Eschelon a LSRC (local service request confirmation) on 7/9/03 (11:39 PM). The LSRC contained:
  1. Qwest order number N23717575.
  2. Qwest's provided ECCKT (circuit ID) of **4HCFU185476PN**.
  3. Qwest confirmed Eschelon's requested due date of 7/23/03.
- Qwest sent Eschelon a jeopardy notice on 7/21/03 (6:07 PM). The jeopardy stated "Unavailability or lack of outside plant or buried service wire. Outside plant includes all facilities - wire cable, terminals, carrier, cross connecting devices, etc." and the jeopardy notice contained no estimated due date.
- Qwest sent Eschelon a jeopardy notice on 7/22/03 (8:18 PM). The jeopardy stated "Unbundled only/RTT Issued" and the jeopardy notice contained no estimated due date.
- Eschelon contacted Qwest delayed order center on 7/23/03. Eschelon asked about the jeopardy notice Qwest sent on 7/22/03. Eschelon spoke with Michelle Bain at Qwest. Michelle said these notices are system generated and she could not provide additional information.
- The end user called Eschelon on 7/23/03 (1:57 PM local time) and told Eschelon that he spoke with an employee in Qwest's Engineering department. The Qwest employee told the end user that there was a T1 due today and there should be absolutely no problem putting a T1 at this address. The customer said that Qwest also said it could hook it up in three days if he wanted to go with Qwest. The end user then said he was going to check the demarc at his location. The end user found a circuit at the demarc. Eschelon asked the customer to read the information on the tag at the demarc.
- The customer called back on 7/23/03 (7:23 PM local time) and read the circuit ID: 4HCFU185476PN. This is the same circuit ID that Qwest provided for the DS1 capable loop on the LSRC sent to Eschelon on 7/9/03.
- Eschelon dispatched a technician to the customer site to confirm the circuit was tagged on 7/24/03. It was.
- Eschelon's switch technician contacted James at the Qwest high cap test center and asked if he could test and accept the circuit. James said that he was not responsible for this order but the responsible tester (due 7/23/03) should have contacted Eschelon's switch technician to advise that the T1 was held for facilities (service inquiry) and would be canceled and rejected and canceled back to Eschelon.

COMMENTS:

**BEFORE THE ARIZONA CORPORATION COMMISSION**

MARC SPITZER

Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

MIKE GLEASON

Commissioner

IN THE MATTER OF U S WEST  
COMMUNICATIONS, INC.'S COMPLIANCE  
WITH SECTION 271 OF THE  
TELECOMMUNICATIONS ACT OF 1996

**Docket No. T-00000A-97-0238**

**ESCHELON'S COMMENTS**  
**REGARDING STAFF SECOND REPORT**

Pursuant to the Procedural Order dated July 9, 2003 in this matter, Eschelon Telecom, Inc. ("Eschelon") submits these Comments regarding the Final Report and Recommendation on Checklist Items 1 and 2 ("Second Report") arising from the July 30-31, 2002 Workshop ("Workshop") by the Arizona Corporation Commission ("Commission" or "ACC") Utilities Division Staff ("Staff"). Eschelon appreciates the opportunity that the Commission and its Staff and facilitators have provided to Eschelon to present issues and participate in these proceedings.

**I. INTRODUCTION**

The Commission should adopt the recommendations of the Staff in the Second Report with respect to resolution of the impasse issues, with a few clarifications (discussed below). The Staff and facilitators have done a tremendous amount of work and analysis and have provided the Commission with a sound basis for adopting those recommendations.

To the extent that Qwest disagrees with the Staff's recommendations,<sup>16</sup> Eschelon will address those issues in its Reply Comments. In these Comments, Eschelon will address a few issues needing clarification.

## **II. DISCUSSION**

Because the issues are going directly to the Commission instead of an Administrative Law Judge ("ALJ"), this is the first time that the parties have had to provide feedback on the Second Report. Perhaps the Staff will address at least some of these issues in Reply Comments, so the Commission will have the benefit of the Staff's recommendations when considering this discussion. The following suggestions would provide needed clarity to help avoid later disputes.

### **A. Policy of Not Applying Rates in Interconnection Agreements**

Eschelon has no objection to the application of Commission approved rates, and in fact, often attempts to persuade Qwest to apply such rates. The impasse issues relate to rates *not* approved by the Commission at all or as applied by Qwest. *See* Second Report, pp. 27-28, Issues K(1)-(3); *see also* Ex. E-9, pp. 18-22; Workshop Transcript ("Tr.") Vol. I, p. 219 line 7 – p. 222, line 25.

#### **1. SGAT Rates**

Staff states that the "rates included in the SGAT should reflect the ACC approved rates resulting from the latest wholesale pricing docket in Arizona." *See* Second Report, p. 28, ¶ 122; *see also id.* p. 38, ¶ 164. Qwest has included many rates in the SGAT that have not been approved by the Commission in a cost docket.<sup>17</sup> Although Eschelon has not opted in to the SGAT, Qwest charges the unapproved SGAT rates anyway. *See, e.g.,* Ex. E-9, pp. 20-22. Eschelon believes the Commission has addressed the handling of such rates in its cost case order.<sup>18</sup> The Commission said:

The rates determined in this Decision are permanent. However, to the extent that issues are not addressed by the Decision, such issues are deferred to Phase III of the proceeding. For issues that

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<sup>16</sup> Although Eschelon does not agree with Staff on two of the fifteen impasse issues, Eschelon will withdraw its objections for purposes of a determination on 271 for these two issues rather than pursue those two issues here. *See* Second Report, p. 33 (¶ 140) and p. 46 (¶ 211).

<sup>17</sup> For example, all of the rates in Qwest's Exhibit A to the SGAT that are accompanied by a footnote number "2" have not been approved by the Commission. Qwest states in footnote 2: "Rates for this element will be proposed in Arizona Cost Docket Phase III. (TELRIC). These rate may not reflect what will be proposed in Phase III. There may be additional elements designated for Phase III than what is reflected here."

<sup>18</sup> In re. Investigation into Qwest Corporation's Compliance With Certain Wholesale Pricing Requirements for Unbundled Network Elements and Resale Discounts, AZ Docket No. T-00000A-00-0194, Decision No. 64922 (June 12, 2002) ("Cost Order").

are deferred to Phase III, if the service is currently being offered, and the rates have previously been reviewed and approved by the Commission, the current rates will continue in effect until different rates are established in Phase III. These rates are not subject to refund, since they are the continuation of the existing rates previously approved by us. ***For new services proposed by Qwest with a new rate that has not been reviewed and approved by the Commission, the interim rate shall be no more than the rate Qwest has proposed. Such "interim rates" shall be subject to a "true-up" and refund once permanent rates are established in Phase III.***

See Cost Order, p. 81 (emphasis added). Staff states: "If the CLEC Interconnection Agreement does not include rates for the work or service requested, then Qwest can and should utilize SGAT rates, ***as these are approved Commission rates.***" See Second Report, p. 28, ¶ 122 (emphasis added). Use of the term "approved" in this sentence has created some confusion. To the extent that this means that the rates are "approved" as interim rates subject to true-up when there is not another rate, Eschelon agrees with Staff's recommendation and asks the Commission to adopt it.

Eschelon believes, based on the Commission's Cost Case Order, that any rate in the SGAT that has not been approved in a cost docket but is applied when there is no other rate is interim and subject to true up pursuant to this language. It also appears that Qwest is expected to provide cost support for its proposed rates and incorporate them in the SGAT. If this is not the case, Eschelon asks the Commission to so find.

## **2. Application of Rates: Current DS1 capable loop example**

At the same time, such a ruling should not be a license for Qwest to begin to charge rates in an unintended, improper, or disruptive manner. It may be some time before any true-up pursuant to the Phase III cost docket occurs. In the meantime, for rates that eventually will be lowered, CLECs must bear the expense of funding those higher prices until a true-up refund is eventually received. With cash being tight in the current telecommunications environment, a true-up addresses some objections to unapproved rates but not all.

Improper application of rates is an issue of increasing concern as Qwest continues to expand and invent ways in which it unilaterally imposes charges on CLECs. The issues go beyond simple overcharging; they also impact provisioning. A recent example in Arizona, as well as other states, relates to DS1 capable loops. In June, 2003, Eschelon and other CLECs noticed a jump in the number of jeopardy notices for DS1 capable loops on the grounds of "service inquiry" for lack of qualified facilities (*i.e.*, held orders). The increase started to occur remarkably close in time to the date on which Qwest received Federal



Communications Commission (“FCC”) 271 approval for Minnesota (June 26, 2003). In the short time from June 20, 2003 through July 15, 2003, Qwest sent 13 DS1 held order jeopardy notices for lack of facilities in Arizona to Eschelon. Qwest had sent only 3 DS1 service inquiry (no build) jeopardy notices for lack of facilities to Eschelon before that in 2003.<sup>19</sup> Therefore, Qwest sent more than *four times* the number of these held order notices in the last 25 days than it did in the previous 170 days for Eschelon alone. To understand the impact of this to a small CLEC, the 13 DS1 held orders in Arizona represent approximately 208 to 312<sup>20</sup> Access Line Equivalents (“access lines”). Extrapolating from Qwest’s recent performance results, this means that Qwest’s policy is costing Eschelon, in Arizona, revenue from 8-12 additional access lines each day the policy is allowed to continue.<sup>21</sup>

Eschelon and other CLECs asked Qwest about the cause of this increase. Qwest has provided conflicting information, but has said generally that the increase in jeopardy notices relates to a recent decision by Qwest to start charging Individual Case Basis (“ICB”) construction rates pursuant to its no-build policy for work that Qwest previously performed on a non-construction basis without charge. Qwest says that it will apply this policy and “construction” charges to activities such as line conditioning and reconditioning pairs. These are just standard steps that are taken routinely to locate facilities. They are part of the make ready work done to deliver a working facility. No true construction work is required. Qwest recovers its costs through the recurring and non-recurring rates approved by the Commission.

Qwest claims that it has been entitled to charge additional construction rates all along but only recently decided to start enforcing this policy. Qwest has also said that employees who were performing the work activities for which Qwest will now charge were out of process and should not have been doing so. Unfortunately, the information Qwest has provided about which work activities were performed but have been stopped and which activities will now result in charges has been sketchy and conflicting.<sup>22</sup>

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<sup>19</sup> Jeopardy notices are sent for a large variety of reasons. Although Qwest has recently responded that the number of *total* jeopardy notices for June did not seem unusually high, the notices of concern relate specifically to service inquiry/no build.

<sup>20</sup> The range varies depending on whether the assumption of 16 or 24 is used.

<sup>21</sup> This is for the current policy change only. As discussed below, Qwest has said it is implementing an additional change to the construction policy as well.

<sup>22</sup> Eschelon has asked Qwest to provide the text of the Multi-Channel Communicators (“MCCs”) that Qwest distributed to its employees to explain these changes, but Qwest refused to provide that information. Any direction given to Qwest’s employees about activities that they should not perform, which they had previously been performing would provide needed information to CLECs and the Commission about whether such activities should be performed and whether they are already included in an approved rate.

Despite the lack of detail, Qwest has clearly implemented this change. The change manifested itself to CLECs in June with the increase in held order jeopardy notices for service inquiry (no build). In addition, on July 3, 2003, Qwest confirmed in an email that a change in “charging” had occurred. After Eschelon asked Qwest to provide a copy of any notice of its change to CLECs, Qwest distributed a new Level 3 notice through CMP to CLECs regarding a change to its no-build construction (“CRUNEC”) policy.<sup>23</sup> In that notice, Qwest creates a new rate element (which does not appear in the SGAT) entitled “Quote Preparation Fee for Simple Facility Rearrangements (“QPFS”).”<sup>24</sup> Qwest has unilaterally created a new rate element and assigned it a rate, with no negotiations and no submission to a cost docket.

In CMP, it does not matter if every CLEC strenuously objects to a change. Qwest often simply denies the CLEC comments. Qwest unilaterally implements the change after the notice period, despite CLEC objection. In this case, the time period for CLECs to comment on the “proposed” change in this CMP notice has not yet expired, even though indications were that Qwest has already implemented changes based on the revised policy.

Eschelon asked Qwest about the timing of the notice (apparently after the change had occurred). This morning, Qwest responded by email that the changes to date have occurred pursuant to an earlier no-build CRUNEC notice that went into effect on June 16, 2003 (over CLEC objection). Qwest said that there is *another change* in progress and that is different from this one. It appears CLECs can expect even more orders to go held for “construction” of facilities in situations in which, previously, Qwest performed these activities as part of the routine make ready work needed to locate compatible facilities.

Until then, according to Qwest, the changes to date relate to the previous no-build CRUNEC notice. In that notice, Qwest made a *one word* change<sup>25</sup> that has led to the disruption of order processing and increase in number of service inquiry jeopardy notices that has prevented Eschelon from serving these

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Qwest could provide this information on a confidential basis, if the information is confidential. Simply because it is “internal,” however, does not necessarily mean that it is confidential. After all, the result of the change has directly affected CLECs, who do not fully understand what has changed.

<sup>23</sup> See PROD.07.11.03.F.03468.UNECRUNEC\_V5.0 (sent July 11, 2003; effective Aug. 25, 2003).

<sup>24</sup> Ironically, Qwest will likely argue that it is providing a benefit to CLECs by creating a “simpler” and presumably less expensive alternative than the QPF. The relative comparison, however, is to the charge of \$0.00 that Qwest has been applying. It is also necessary to know whether the costs are included in other charges that have been approved by the Commission. Qwest should not be able to apply a charge because it has merely created a new name (“facility reassignments”) for an existing activity. Also, although the QPF will potentially be lower, the same lengthy time frames apply under the allegedly “simpler” process.

<sup>25</sup> See PROS.04.30.03.F.01071.CRUNEC. The only other change was in capitalization of one word.

customers as their carrier of choice. The single word that changed in Qwest's notice was the deletion of the word "conditioning" from the definition of "incremental facility work" in the exceptions to the CRUNEC process. By deleting the exception, Qwest made "conditioning" subject to the construction policy. In other words, now that Qwest has 271 approval in virtually all of its states, it considers "conditioning" to be a build. No plow to the ground (or any remotely similar construction) but CLECs pay for a build and experience all associated delays.

This is directly contrary to the language of the Qwest-Eschelon ICA in Arizona. Attachment 1 (Rates and Charges) contains two separate sections, one for construction and another for conditioning. *See* ICA, Att. 1, ¶ 3.1 & ¶ 4.1. Conditioning is not a sub-section under construction. *See id.* Clearly, conditioning is not “construction” under the ICA. In CMP, Qwest agreed to the following language in its governing CMP document:

In cases of conflict between the changes implemented through this CMP and any CLEC interconnection agreement (whether based on the Qwest SGAT or not), the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such interconnection agreement. In addition, if changes implemented through this CMP do not necessarily present a direct conflict with a CLEC interconnection agreement, but would abridge or expand the rights of a party to such agreement, the rates, terms and conditions of such interconnection agreement shall prevail as between Qwest and the CLEC party to such agreement.<sup>26</sup>

This paper promise has meant nothing in this situation. Qwest has already implemented its change as to Eschelon’s orders.

Similarly, Qwest’s change in its construction policy is contrary to Qwest’s commitments in the Arizona 271 proceeding. The SGAT was developed in the 271 proceedings. The Arizona SGAT provides:

9.1.2.1.2 If cable capacity is available, Qwest will complete **incremental facility work** (i.e., **conditioning**, place a drop, add a network interface device, card existing subscriber Loop carrier systems at the Central Office and Remote Terminal, add Central Office tie pairs, add field cross jumpers) in order to complete facilities to the Customer premises.

Although “conditioning” appears here in the SGAT, Qwest has unilaterally deleted it from its definition of incremental facility work. The FCC relied on the SGAT language in previous 271 proceedings. In paragraph 164 of the FCC’s 9-state Qwest 271 Order (Docket No. 02-314; Dec. 20, 2002), the FCC said: “The record shows that Qwest attempts to locate compatible facilities for competing LECs,” and it shows that Qwest “performs incremental facility work to make UNEs available.” In footnote 617, the FCC quotes section 9.1.2.1.2 of Qwest’s SGAT (which is identical to the AZ SGAT section of the same number, quoted above). In the SGAT, incremental facility work, including conditioning, is performed at no additional

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<sup>26</sup> CMP Document, Section 1.0; *see* <http://qwest.com/wholesale/downloads/2003/030717/QwestWhslChgMgtDoc061803.doc>

charge.<sup>27</sup> Under Qwest's revised policy, a fee is required just to obtain a QPF for conditioning, plus there will be additional construction charges if the order proceeds.

Ms. Dubuque of Qwest told Eschelon in an email today that, for the held orders that Eschelon had asked Qwest to review as to this issue, Eschelon must select one of the following options: "cancel, order Private Line, use CRUNEC process." Eschelon has ordered private lines for most of these orders. After its communications with Eschelon on this issue, Qwest is obviously aware that it would have to address the issue of why the facilities were available for private lines but not DS1 capable loops, if it processed these orders. Unlike private lines ordered from the retail tariff in the past (when Qwest was not processing EEL orders), Qwest is now sending jeopardy notices for private lines to Eschelon.

Initially, when Qwest told Eschelon that it was implementing additional charges for DS1 capable loop orders, Eschelon believed that this change may result in a dispute about the applicability of non-recurring charges. It also believed that, because Qwest said the issue related to charges, at least the orders would start to flow again and the number of jeopardy notices would return to previous levels. In that scenario, the Commission's order on interim rates would have at least allowed Eschelon to attempt to obtain a refund if the Commission ultimately disagreed with Qwest about the applicability of the charges. The effect of Qwest's unilateral change is much worse, however.

Qwest is not simply charging a non-recurring charge -- the applicability of which CLECs may dispute (although it may also do that as well, after application of CRUNEC). But rather, Qwest is also claiming that work activity it previously performed at no charge to locate compatible facilities is "construction" of facilities. It has said that it will charge an ICB rate, so CLECs cannot even plan for these new costs. By invoking its twice revised no-build CRUNEC policy, Qwest is requiring CLECs to not only pay an up-front quote preparation fee ("QPF") but also to experience a *delay of almost a month or more* just to get the quote and estimated ready for service date.<sup>28</sup> When all of the CRUNEC steps are completed,

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<sup>27</sup> In an email dated July 11, 2003, Toni Dubuque of Qwest told Eschelon in an email that: "The other question that came up in our discussion is one on incremental facilities as stated below in 9.1.2.1.2. If the facility (DSI capable loop) is available, we would do the incremental facility work per the SGAT at no additional cost." Nonetheless, in an email today, Ms. Dubuque quoted the CRUNEC process in which the word "conditioning" was deleted from the incremental facility work description.

<sup>28</sup> Qwest has not explained why it needs approximately a month of time for this when Qwest will have had to identify the problem to send the no facilities jeopardy notice. Qwest provides such notices when no compatible facilities are available. Presumably, Qwest checks for compatible facilities before making this

60 or 90 days could easily elapse.<sup>29</sup> Customers are not tolerant of such delays. The delay is unnecessary for this type of work, and it places CLECs at a competitive disadvantage. The expense and delay really mean that the only alternative for CLECs will often be to cancel the orders, if the customer does not request cancellation first. Qwest has not shown that it charges Retail customers for comparable work, as is required under the ICA and SGAT.<sup>30</sup>

Qwest is attempting to apply charges meant for true builds to the type of make ready work that is done routinely to locate compatible facilities. The Commission should address the process by which Qwest has unilaterally implemented this transformation. Qwest has said that it believes the rates (including “ICB” rates)<sup>31</sup> are commission approved rates. This suggests that Qwest will not agree to refund any fees pursuant to a true-up, even assuming the Commission later disagrees with Qwest’s application of the rates, unless the Commission indicates otherwise.

Even assuming that these charges are interim and subject to true-up, the delays and obstacles associated with the no-build CRUNEC policy are a problem. Qwest has effectively shut down these orders. Eschelon has already lost customers in a short period of time as a result of this issue. Eschelon asks the Commission to require Qwest to suspend the changes it has made (and is making pursuant to the revised policy) until Qwest brings those changes and associated rates to the Commission and obtains approval.

#### **B. Availability of Features With UNE-P.**

Staff addressed the availability of certain features with UNE-P and agreed with Eschelon’s position that these features should be made available with UNE-P. *See* Second Report, p. 10, ¶¶ 40-42.

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representation. In confirming this information, Qwest would have the information it needs for the construction quote before the 20 day quote period even commences.

<sup>29</sup> In addition, in the past, Qwest has said that Eschelon needs an interconnection agreement (“ICA”) amendment to invoke this process, even though its current ICA addresses construction of facilities. Improper insistence on unnecessary contract amendments to cause delay and impose unwanted terms is one of the first issues that Eschelon raised in this 271 proceeding (in its filing on Sept. 21, 2000), and this issue remains a problem.

<sup>30</sup> *See* SGAT ¶ 9.19; ICA Att. 1, ¶ 3.1.

<sup>31</sup> In Minnesota, the ALJ recommended: “If a CLEC requests an element that is on Qwest's SGAT as ICB and has not been approved as such by the Commission, Qwest should either develop a cost-based price or substantiate the need for ICB pricing, and file it with the Commission for review within 60 days of offering the price to a CLEC in Minnesota.” Findings of Fact, Conclusions of Law, and Recommendation, *In the Matter of the Commission's Review and Investigation of Qwest's Unbundled Network Element (UNE) Prices*, Minnesota Office Of Administrative Hearings, OAH Docket No. 12-2500-14490-2; PUC Docket No. P-421/C1-01-1375 (Aug. 2, 2002), ¶ 226 (“Minnesota ALJ Report”); *see also* Order Setting Prices and Establishing Procedural Schedule, PUC Docket No. P-421/C1-01-1375 (Oct. 2, 2002) (reconsideration motion denied Nov. 26, 2002).

This is an important issue. By allegedly moving features that would otherwise be available to CLECs through UNE-P to the Advanced Intelligent Network (“AIN”) platform, for example, Qwest has avoided the obligation to provide these features to CLECs while providing the features to its own Retail customers. Adopting Staff’s recommendation will help cure that disparity.

A sub-issue that arises during the Staff’s discussion of feature availability requires clarification. The facts have changed since Qwest provided information to the Staff, although it appears that Qwest did not update its information with Staff. Qwest committed to update information on its web site but instead has deleted it. Qwest should be required to place the updated information on its web site in a readily accessible location.

Eschelon raised this issue during the Workshop because ease of access to information about feature availability, while less critical than the access itself, is important. To develop, market, and order a product, CLECs need to know which features are and are not available with a product, as well as the Universal Service Ordering Codes (“USOCs”) for those features. Eschelon has relayed examples of how Eschelon had attempted to order features with UNE-P only to either have the orders rejected or, worse yet, to have the features dropped during order processing without Eschelon’s knowledge. In the latter situations, Eschelon learned about the feature problems only when the end user customer complained. These problems occurred because Qwest’s documentation for

CLECs was unclear as to feature availability with UNE-P.<sup>32</sup> Eschelon pointed out that, although Qwest had added a list of features that were unavailable with UNE-P to its website after Eschelon complained about this issue, the list was incomplete and difficult to find on Qwest's website. *See, e.g.*, Tr. Vol. II, p. 442, line 15 – p. 444, line 17; *see also* Ex. E-1, pp. 3-4. Other CLECs have actually asked Eschelon to forward the document to them when they could not find it either. Eschelon asked Qwest to add a link to the website in the relevant sections to make it easier to find the document entitled “Features, Products & Services Unavailable with UNE-P Products.” *See* Tr. Vol. II, p. 442 line 16 – p. 443, line 16.

The Staff points to the ready availability of this information in its Second Report, based on information provided to it by Qwest. The Staff states:

Qwest described its UNE-P product catalogs (“PCATS”) and stated that in the general information PCAT, Qwest includes a list of the features that are unavailable with UNE-P, including AIN products, voice messaging products, feature products, etc. The features are provided by USOC, and there is a language description for each one.

*See* Second Report, p. 7, ¶ 32. The Staff also quotes from Qwest's Late-Filed Exhibit A, in which Qwest specifically commits to revise the “Optional Features section of the PCAT” to update “the downloadable ‘USOCs Not Available with UNE-P’ (Features Unavailable with UNE-P)” document. *See id.* p. 9, ¶ 36. Qwest represented to the Commission that it had completed these updates on August 27, 2002. *See id.* ¶ 37.

Since the Workshop, however, Qwest has ***deleted this document from its PCAT***.<sup>33</sup> If Qwest sent a notice stating that it deleted the document, Eschelon cannot find it.<sup>34</sup> Qwest has taken the opposite action from the one requested by Eschelon and described by Qwest in the Late Filed Exhibit relied upon by Staff. As indicated, CLECs need this information to plan, market, and order UNE-P. Also, Qwest should be held to its commitment to provide and update the information on its web site.<sup>35</sup>

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<sup>32</sup> For example, McLeod recently discussed another example of this in CMP. McLeod opened a ticket (#157043) to ask Qwest to correct the features available with UNE-P list because it had a feature (USOC GVT) on it that really was not available with UNE-P.

<sup>33</sup> The document was available at <http://www.qwest.com/wholesale/pcat/unep.html>. *See* Ex. E-1, p. 4, note 4; *see also* Tr. Vol. II, p. 442 line 16 – p. 443, line 16. Now, at the same URL, Qwest merely describes very generally that “Some products and services are not available with UNE-P including” listed categories of features. Although Qwest represented that the “features are provided by USOC, and there is a language description of each one” (*see* Second Report, p. 7, ¶ 32), Qwest has deleted that necessary detail.

<sup>34</sup> Qwest committed to the Staff that, for such PCAT changes, it would “funnel that through the CMP process.” *See* Second Report, p. 7, ¶ 32.

<sup>35</sup> If Qwest has moved the documentation to a more difficult location that Eschelon could not find after searching diligently, Eschelon has given Qwest every opportunity to correct Eschelon's understanding that



While this may seem like a small issue and, in fact is less important than the main issue on which the Staff made its recommendation regarding availability of features, the devil is often in the details. Preparing and provisioning a product for end user customers is a detail intensive process. While a product may be available in theory, the documentation and processes at the detail level need to be in place to make that availability a reality.

Eschelon asks the Commission to adopt the Staff's recommendation on availability of features and to further require Qwest to post a complete "Features, Products & Services Unavailable with UNE-P Products" (with USOCs and language description) document, as modified to reflect the Commission's decision,<sup>36</sup> in a logical and readily accessible location on Qwest's web site.

### **C. Training**

The Staff recommends that the Commission require Qwest to take certain steps to ensure its employees are trained in proper processes. *See* Second Report, p. 12, ¶¶ 50-51. Eschelon supports this recommendation. Part of the Staff's recommendation is to require Qwest to send out relationship management surveys to CLECs annually "as part of the CMP [Change Management Process] process." *Id.* ¶ 51. Some Eschelon employees have received calls regarding a Qwest survey about Qwest, but the survey was not discussed in CMP. To Eschelon's knowledge CLECs had no input into the survey questions or the list of CLEC employees to be contacted. A perfunctory survey that does not address key issues will not serve the purposes of the survey stated by the Staff. CLEC involvement in the process is needed to help ensure its relevance to issues of importance to CLECs. Eschelon asks that the Commission adopt this recommendation and, when doing so, clarify that the Staff's reference to CMP is meant to ensure CLEC participation in the survey process (and not just receipt of notice, if any) through CMP.

### **D. Unannounced Dispatches**

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Qwest deleted the document from the PCAT after the Workshop. On at least three occasions, Eschelon's Local Service Product Manager asked Qwest's Senior Service Manager to address this issue. In an email dated May 28, 2003, she said to Qwest: "I am attempting to locate the ineligible USOC list for UNE-P that used to be on your wholesale website and I'm unable to locate it. Has it been removed or just moved to a different section? If it was removed, was there notification sent out indicating that you were eliminating it from your site?" She sent follow up email requests asking Qwest when she would receive a response on May 30, 2003 and June 9, 2003. Qwest chose not to respond. Perhaps the Commission can obtain this information.

Staff agreed with Eschelon that Qwest should make available to CLECs a published, documented process for non-emergency maintenance visits to CLEC end-user premises. *See* Second Report, p. 15, ¶ 63. Staff indicated that Qwest provided a matrix describing the process and posted it on the website. *Id.* A minor adjustment by Qwest would better accommodate the needs of CLECs. As indicated in the Second Report, the matrix was added to the Qwest web site under the “general heading of Qwest Wholesale CLEC Ad Hoc Meetings.” *Id.* A CLEC representative searching for Qwest’s policy on notification of dispatches, however, would have no reason to search under “Ad Hoc” meetings, particularly if that particular representative did not attend the ad hoc meeting held in 2002. The Commission should require Qwest to add links, in the relevant portions of the PCAT (such as Maintenance & Repair), directing users to this document, so that CLECs may find it.

In addition to the notice issue for non-emergency visits, Qwest addressed a process change that it says it implemented on July 23, 2002 to prevent unnecessary dispatches on UNE-P orders. *See* Second Report, p. 15 ¶ 61.<sup>37</sup> Qwest said that it fixed the problem. In two consecutive days this week, however, Eschelon has experienced two more examples of this problem. Eschelon has reported the examples to its Qwest Service Manager and is waiting for a root cause analysis. The examples occurred in Colorado and Minnesota. Eschelon does not object to closing this impasse issue, with the minor modification to the web site suggested in the previous paragraph, for purposes of this proceeding. If examples continue to occur and occur in Arizona, however, Eschelon may need to raise this issue again with the Commission.

#### **E. Maintenance and Repair – Reciprocity**

The Staff addressed reciprocity with respect to initial trouble isolation charges in the Second Report. *See* Second Report, p. 26, ¶ 113. Eschelon asks the Commission to recognize that the Staff’s recommendation applies to only charges related to initial testing and that charges for subsequent testing due to Qwest error (described in the next paragraph) have not been addressed by this ruling. Charges related to subsequent testing may be addressed elsewhere, such as the upcoming cost case or interconnection agreement negotiations or arbitrations.

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<sup>36</sup> Although the documentation needs updating, availability of the features themselves need *not* be delayed while that process takes place. When Qwest chose to provide voice mail and AIN features with a platform product in the past, for example, Qwest did not require any CMP process before providing those features.

<sup>37</sup> The Qwest matrix (referred to in ¶ 63 of the Second Report) does not address such unnecessary Qwest dispatches that occur during the provisioning of a Local Service Request (“LSR”).

The section of the Statement of Generally Available Terms (“SGAT”) on Trouble Isolation (12.3.4) does not address an area of primary concern to Eschelon. Eschelon does its own trouble isolation testing routinely. The reciprocity problem that still needs to be addressed, however, is how to handle the situation in which Qwest gets it wrong. In this scenario, the CLEC conducts the test and finds the trouble is not in its network. Then, Qwest disagrees. Therefore, the CLEC must take the additional step of dispatching a technician for the purpose of determining whether Qwest is correct in denying the CLEC’s test results. If the CLEC proves that the trouble is, in fact, in Qwest’s network, the CLEC should be able to charge Qwest for this dispatch. Qwest will charge CLECs in the same situation, so CLECs should be able to charge Qwest. Because Section 12.3.4 of the SGAT does not address this scenario, it does not preclude this result. The Commission should not foreclose more review of this issue with its ruling in this 271 case.

#### **F. Loss and Completion Reports**

Staff agreed with Eschelon that Qwest should notify CLECs when customers are lost. *See* Second Report, p. 27, ¶ 117. Qwest provided an update to Staff on the changes in CMP that address this issue. *Id.* ¶ 118. Since then, Eschelon has asked Qwest to re-open its Change Request (“CR”) on the accuracy and completeness of loss reports due to an increase in the number of problems that are created by insufficient loss and completion reports. Customers call to complain when they receive bills both from Eschelon and their new resale or UNE-P provider. Eschelon has no way of knowing that the customer has left, however, if the loss report is inaccurate. Qwest did not agree to re-open the CR but did open an action item to address these issues. The Staff recommends that the loss and completion report issues be handled in the CMP process. *See* Second Report, p. 27, ¶ 117. Based on the information provided by Qwest, however, Staff refers to a specific CR number. *Id.* ¶ 118. This issue should not be viewed as being wholly addressed by that single CR, because other loss report issues are pending.

The Commission should adopt the Staff’s recommendation that “Additional changes to the Loss and Completion Report that Eschelon is requesting should be handled by the CMP process. . . .” In addition, as Staff has recommended for some of the CMP issues, the Commission should require Qwest (for all of the issues referred to CMP) to advise the Commission when the process is agreed upon and implemented. *See, e.g.,* Second Report, p. 21, ¶ 86.

#### **G. Maintenance and Repair –Untimeliness of Bills**

In response to CLEC complaints about untimely bills, Qwest stated that “‘bills are not issued on maintenance charges that are over 45 days old.’” *See* Staff Report, p. 22, ¶ 91 (quoting Notarianni & Doherty Checklist Item 2 OSS Reply Declaration, ¶ 238 (July 26, 2002)). The Staff recommends that the Commission require Qwest to document its policy and post it on Qwest’s web site so that it is applied uniformly. *See* Staff Report, p. 22, ¶ 92. Eschelon supports this recommendation.

In addition, Eschelon asks the Commission to clarify the meaning of Qwest’s statement so that the documented process actually addresses the problem of untimely bills. Eschelon was initially heartened by this promise by Qwest. Since then, Eschelon has learned from Qwest that Qwest interprets the language differently. When Eschelon has disputed maintenance charges that are more than 45 days old, Qwest has claimed that the charges are valid. Qwest says that the quoted language above means simply that Qwest will not ***write an order*** to generate billing more than 45 days after the maintenance activity takes place, not that it will not bill for a repair that took place more than 45 days ago. Anyone who has read that language may ask themselves whether, when reading it, this was apparent to them. To Eschelon, this interpretation defies the plain meaning of the words used in Qwest’s sworn testimony.

The issue raised by Eschelon was timeliness of bills. Untimely information makes verifying bills very difficult. *See* Second Report, p. 21 ¶ 88. Under Qwest’s recent interpretation of this language, the following scenario may occur, according to Qwest:

- 7/1      Tech dispatch (repair activity occurs)
- 8/14      Monthly bill date – no bill sent, because Qwest paperwork not done
- 8/15      Qwest issues record order on repair internally at Qwest (within 45 days)
- 9/14      Qwest bills CLEC on monthly bill (75 days after repair)

Qwest claims that a bill sent 75 days after the repair date falls within the policy in its sworn testimony and is timely. Eschelon has found, however, that verifying a bill 75 days after the event is very difficult, if it can be done. Qwest’s interpretation should be rejected as not meeting the expectation set by the plain language of its sworn testimony and as inconsistent with the purpose of requiring timely billing. The Commission should adopt the Staff’s recommendation, with the clarification that the bills will be sent to the CLECs within 45 days of the repair date.

### **III. CONCLUSION**

The Commission should adopt the recommendations of the Staff in the Second Report with respect to resolution of the impasse issues, with the clarifications discussed here. With respect to compliance with 271, several of the items require follow up action. Qwest should complete those actions and verify compliance before obtaining 271 approval.

July 18, 2003

ESCHELON TELECOM, INC.

By:

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Karen L. Clauson  
Eschelon Telecom, Inc.  
730 2nd Avenue South, Suite 1200  
Minneapolis, MN 55402-2456  
(612) 436-6026

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, August 11, 2003 5:56 PM  
**To:** 'Jodi Smith'  
**Subject:** FW: MTI Reply Comments on DS1 Conditioning Issue

[Here are the MTI comments in AZ 271 mentioned in my other email.](#)

-----Original Message-----

**From:** BRECHERM@gtlaw.com [SMTP:BRECHERM@gtlaw.com]  
**Sent:** Friday, July 25, 2003 4:15 PM  
**To:** klclauson@eschelon.com  
**Cc:** mhazel@mtntel.com; jmanogian@mtntel.com  
**Subject:** Reply Comments on DS1 Conditioning Issue

<<2P2901!.DOC>> Karen - Attached is a copy of the reply comments which we are sending to the Arizona Corporation Commission today on behalf of Mountain Telecommunications, Inc. on the Second Staff Report in the 271 proceeding. The comments are limited to the DS1 conditioning issue. Of course, you will receive an official copy via mail as you are on our service list, but I wanted you to see our filing right away. Thanks for your help in providing me with copies of the testimony and other documents.

Rick Brecher

***Mitchell F. Brecher***  
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**e-mail: brecher@gtlaw.com**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**MARC SPITZER**  
**Chairman**

**JAMES M. IRVIN**  
**Commissioner**

**WILLIAM MUNDELL**  
**Commissioner**

**JEFF HATCH-MILLER**  
**Commissioner**

**MIKE GLEASON**  
**Commissioner**

<b>IN THE MATTER OF U S WEST</b>	)	<b>DOCKET NO T-00000A-97-0238</b>
<b>COMMUNICATIONS, INC.'s COMPLIANCE</b>	)	
<b>WITH SECTION 271 OF THE</b>	)	
<b>TELECOMMUNICATIONS ACT OF 1996</b>	)	
	)	
	)	

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**REPLY COMMENTS OF MOUNTAIN TELECOMMUNICATIONS, INC.  
REGARDING STAFF'S SECOND REPORT**

Mountain Telecommunications, Inc. (MTI) hereby submits its reply comments in the above-captioned matter.

In its initial comments regarding the Staff's Second Report, filed July 18, 2003, Eschelon Telecom, Inc. brought to the Commission's attention a significant change in the manner in which Qwest provides DS1 capable loops. Simply by removing a single word from a provisioning document without any authority from either the Commission or the Federal Communications Commission (FCC) to do so, Qwest has increased the costs to its competitors for DS1 capable loops, failed to process orders, and delayed the

provisioning of such loops; and, in doing so, has materially impeded the ability of its competitors to service customers.<sup>38</sup>

Eschelon describes accurately what Qwest has done. Qwest's procedures for requesting construction in connection with certain Unbundled Network Elements are set forth in a Qwest document entitled "Competitive Local Exchange Carrier (CLEC) Requested Unbundled Network Elements (UNE) Construction (CRUNEC)." Pursuant to that document, Qwest did not impose construction charges on requests that could be resolved through facility work or assignments. Among the specific exclusions from CRUNEC construction charges was the following:

Incremental Facility Work: Completing facilities to an end-user's premises (e.g., Conditioning, place a drop, add a Network Interface Device (NID), Central Office (CO) tie pairs, field cross connect jumpers, or card in existing Subscriber Loop Carrier systems at the CO and Remote Terminal. (emphasis added)

Thus, line conditioning historically had not been subject to "construction" charges (which makes abundant sense given that no construction occurs with line conditioning). Without Commission authority or approval and without change in Qwest's Statement of Generally Available Terms and Conditions (SGAT) or in any interconnection agreement between Qwest and any CLEC (including MTI), Qwest quietly removed the critical word "conditioning" from the above-quoted portion of its CRUNEC document. As a result, Qwest has begun to impose "construction" charges for removing from loops provided as UNEs bridge taps, load coils, low pass filters and range extenders. Such removal is necessary for the loops to be suitable for high speed switched wireline telecommunications capability. Such removal does not require Qwest to engage in

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<sup>38</sup> This situation is described in detail in Eschelon's July 18 comments at pp. 4 – 11.



“construction” in any sense of that word or to incur “construction” costs which may be passed on to its UNE customers.

As Eschelon noted in its comments, Qwest’s quiet removal of one critical word and resulting increase in the charges for conditioned loops and resulting delay in provisioning orders which do not include CRUNEC “construction” requests occurred almost simultaneously with Qwest’s receipt of Section 271 authority in several states. Qwest has not explained nor can it explain how removal of load coils, bridge taps, low pass filters and range extenders suddenly changed from “incremental” facility work to significant construction projects requiring payment of new, unauthorized and wholly unexpected additional fees which Qwest creatively has named “Quote Preparation Fee for Simple Facility Rearrangements.” Stated simply, what Qwest has done through the guise of deleting the word “conditioning” from the list of exclusions contained in its CRUNEC document is to require CLECs to pay special fees to Qwest simply to provide those CLECs with price quotes to have done what Qwest is obligated to do under the Communications Act and the FCC’s rules governing unbundled network elements – “condition” loops to make them suitable for high speed switched telecommunications. As Qwest itself has candidly acknowledged, it has a “concrete specific legal obligation to provide all types of loops with their attendant functions, features, and capabilities.”<sup>39</sup>

These quote preparation fees are not insubstantial. The Quote Preparation Fee being charged by Qwest is \$1,685 per DS1 capable loop order. Of even greater importance than these additional charges which are unwarranted and unauthorized, Qwest’s treatment of line conditioning as construction requiring “preparation” of price

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<sup>39</sup> See Checklist Item 4 Unbundled Loops Rebuttal Affidavit of Jean M. Liston, Qwest Corporation, filed with the Commission February 19, 2001 in this docket, at 6.

quotes has caused substantial delays, often in excess of 100 days, in the processing time for new facilities orders. Like Eschelon, MTI has experienced numerous facilities order rejections in the few months following this change. As a result, MTI has been unable to deliver timely service to its customers. It is difficult to imagine any conduct of any incumbent local exchange carrier that is more anticompetitive and more violative of the letter and the spirit of the 1996 Telecommunications Act than prolonged delays in fulfilling CLEC facility orders under the guise that such orders must be treated as “construction projects” for the simple removal of certain facilities when such removal is necessary in order for the unbundled loops to be suitable for high speed switched telecommunications.

Qwest’s sudden and unauthorized decision to impose construction charges and dilatory price quote preparation procedures on loop conditioning within weeks of receiving initial Section 271 authorizations for other in-region states is all the more remarkable in light of testimony filed by Qwest in state Section 271 proceedings. For example, on January 19, 2001, Qwest submitted the direct testimony of one of its employees, Jean M. Liston in the Seven State 271 Collaborative Process. That testimony was offered for the express purpose of demonstrating Qwest’s purported compliance with item no. 4 of the Competitive Checklist codified at Section 271(c)(2)(B) of the Communications Act. Qwest witness Liston testified that Qwest would condition loops to support CLEC DS1 capable services and explained loop conditioning as follows:

Basically, loop conditioning is the term used to describe the process of removing load coils, bridge taps, and any other devices from existing copper loops that would negatively impact the transmission of a digital signal. In many cases, the data portion of the loop will not work correctly if there are load coils or certain amounts of bridge taps on the loop.

Qwest provides CLECs with Loop Conditioning for xDSL services upon request.<sup>40</sup>

Indeed, the witness acknowledged accurately in the testimony that the Federal Communications Commission mandated loop conditioning in its First Report and Order in CC Docket No. 96-98.<sup>41</sup> In short, Qwest's testimony submitted as part of its campaign to win Section 271 relief described loop conditioning, and acknowledged that it was obligated to provide such conditioning as part of its obligation to provide DS1 capable loops. Conspicuously absent from that testimony and from all other filings submitted to the Commission prior to April 2003 is any indication of Qwest's intention to commence imposing construction including price quote, charges and procedures on such loop conditioning on its competitors once it began to win Section 271 authorization. Neither is there any reference to be found in any FCC decision which provides any support whatsoever for the novel proposition that line conditioning constitutes special construction of such a nature as to warrant special procedures, price quote preparation fees, and prolonged provisioning delays.<sup>42</sup>

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<sup>40</sup> Testimony of Jean M. Liston, Qwest Corporation, Seven State 271 Collaborative Process, submitted January 19, 2001 at 18.

<sup>41</sup> Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (First Report and Order), 11 FCC Rcd 15499 (1996).

<sup>42</sup> MTI does not dispute that that Qwest has been authorized by the FCC to impose a TELRIC-based charge for line conditioning. It has that authority and it does charge for conditioning. However, it does not have the authority to impose price quotation and special construction fees in addition to the TELRIC-based conditioning charges.

In considering whether Qwest has complied with the requirements of Section 271, including the Competitive Checklist elements codified at Section 271(c)(2)(B) of the Communications Act, the Commission should be mindful of this latest effort by Qwest to materially increase the charges for unbundled DS1 capable loops. Point no. 4 of the Competitive Checklist is “local loop transmission from the central office to the customer’s premises, unbundled from local switching, or other services.” Unless and until Qwest abandons its policy of imposing “construction” and price quotation charges for line conditioning, it cannot be found to have fulfilled the requirement codified at Section 271(c)(2)(B)(iv) – point 4 of the checklist.

Respectfully submitted,

**MOUNTAIN  
TELECOMMUNICATIONS, INC.**

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Mitchell F. Brecher

GREENBERG TRAURIG, LLP  
800 Connecticut Avenue, NW  
Washington, DC 20006  
(202) 331-3100

*Its Attorneys*

July 25, 2003

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing Reply Comments of Mountain Telecommunications, Inc. Regarding Staff's Second Report on all parties of record in these proceedings by mailing a copy thereof, properly addressed with first class postage prepaid to the following:

Timothy Berg FENNEMORE CRAIG 3003 North Central Avenue Suite 2600 Phoenix, AZ 85012	Scott S. Wakefield RUCO 2828 North Central Avenue Suite 1200 Phoenix, AZ 85004
Lyn Farmer, Chief Administrative Law Judge Jane Rodda, Administrative Law Judge Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007	Raymond S. Heyman Michael Patten Roshka, Heyman & DeWulf 400 East Van Buren Street Suite 800 Phoenix, AZ 85004-3906
Andrew Crain Charles Steese QWEST Corporation 1801 California Street Suite 5100 Denver, CO 80202	Mary E. Steele Daniel Waggoner Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688
Maureen Arnold Qwest Corporation 3033 North Third Street Room 1010 Phoenix, AZ 85012	Kevin Chapman Director-Regulatory Relations 5800 Northwest Parkway Suite 125, Room I-S-20 San Antonio, TX 78249
Richard S. Wolters Michel Singer Nelson AT&T 1875 Lawrence Street Room 1575 Denver, CO 80202-1847	Joyce B. Hundley United States Department of Justice Antitrust Division City Center Building 1401 H Street, NW Suite 8000 Washington, D.C. 20530
Michael M. Grant Todd C. Wiley GALLAGHER & KENNEDY 2575 East Camelback Road Phoenix, AZ 85016-9225	Lyndon J. Godfrey, VP, Government Affairs Rod Aguilar AT&T 795 Folsom Street

<p>Thomas H. Campbell Lewis &amp; Roca 40 North Central Avenue Phoenix, AZ 85007</p> <p>Thomas F. Dixon, Jr. MCI WorldCom 707 17<sup>th</sup> Street Suite 3900 Denver, CO 80202</p> <p>Eric S. Heath Sprint Communications Company L.P. 100 Spear Street Suite 930 San Francisco, CA 94105</p> <p>Paul A. Bullis Division Chief Counsel Office of the Arizona Attorney General Public Advocacy Division 1275 West Washington Phoenix, AZ 85007-2926</p> <p>Kimberly M. Kirby Davis, Dixon, Kirby, L.L.P. 19200 Von Karman Avenue Suite 600 Irvine, CA 92612</p> <p>Garry Appel TESS Communications, Inc. 1917 Market Street Denver, CO 80202</p> <p>Mark N. Rogers Excell Agent Services, L.L.C. 2175 West 14<sup>th</sup> Street Tempe, AZ 85281</p> <p>Harry Pliskin Senior Counsel Covad Communications Company 7901 Lowry Boulevard Denver, CO 80230</p>	<p>Suite 2104 San Francisco, CA 94107</p> <p>Maureen A. Scott Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007</p> <p>Caroline Butler Legal Division Arizona Corporation Commission 1200 West Washington Street Phoenix, Arizona 85007</p> <p>Ernest G. Johnson, Director Utilities Division Arizona Corporation Commission 1200 West Washington Street Phoenix, AZ 85007</p> <p>Curt Huttzell State Government Affairs Electric Lightwave Four Triad Center Suite 200 Salt Lake City, UT 84180</p> <p>Jonathan E. Canis Michael B. Hazzard Kelly Drye &amp; Warren, L.L.P. 1200 19<sup>th</sup> Street, NW 5<sup>th</sup> Floor Washington, D.C. 20036</p> <p>Andrew O. Isar TRI 4312 92<sup>nd</sup> Avenue, NW Gig Harbor, WA 98335</p> <p>Steven J. Duffy Ridge &amp; Isaacson P.C. 3101 North Central Avenue Suite 1090 Phoenix, AZ 85012-1638</p>
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<p>David Conn McLeodUSA, Inc. 6400 C Street, SW Post Office Box 3177 Cedar Rapids, IA 52406</p> <p>Dan Lipschultz Moss &amp; Barnett 4800 Norwest Center 90 South Seventh Street Minneapolis, MN 55402-4129</p> <p>Richard P. Kolb On Point Communications Two Conway Park 150 Field Drive Suite 300 Lake Forest, IL 60045</p> <p>W. Hagood Bellinger 4969 Village Terrace Drive Dunwoody, GA 30338</p> <p>Diane L. Peters Director, Regulatory Services Global Crossing Telemanagement, Inc. 1080 Pittsford Victor Road Pittsford, NY 14534</p> <p>Bradley Carroll Cox Arizona Telecom, L.L.C. 10401 North 29<sup>th</sup> Avenue Suite 100 Phoenix, AZ 85027</p> <p>Barbara P. Schneider LEC Relations Manager-Industry Policy Z-Tel Communications, Inc. 601 South Harbour Island Boulevard Suite 220 Tampa, FL 33602</p>	<p>Joan S. Burke Osborn &amp; Maledon 2929 North Central Avenue 21<sup>st</sup> Floor Phoenix, AZ 85067-6379</p> <p>Diane Bacon, Legislative Director Communications Workers of America 5818 North 7<sup>th</sup> Street Suite 206 Phoenix, AZ 85014-5811</p> <p>Traci Grundon Mark P. Trinchero Davis Wright Tremaine LLP 1300 Southwest Fifth Avenue Suite 2300 Portland, OR 97201</p> <p>Brian Thomas, VP Regulatory -- West Time Warner Telecom, Inc. 520 Southwest Sixth Avenue Suite 300 Portland, OR 97204</p> <p>Andrea P. Harris Senior Manager, Regulatory Allegiance Telecom Inc. of America 2101 Webster Suite 1580 Oakland, CA 94612</p> <p>Lyndall Nipps Vice President, Regulatory Compliance Allegiance Telecom of Arizona, Inc. 845 Camino Sur Palm Springs, CA 92262</p> <p>Jon Poston ACTS 6733 East Dale Lane Cave Creek, AZ 85331</p>
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Dated at Washington, D.C., this 25<sup>th</sup> day of July, 2003.

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Michelle D. Diedrick



-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Friday, August 15, 2003 4:22 PM  
**To:** 'Jodi.Smith@usdoj.gov'  
**Cc:** Oxley, J. Jeffery  
**Subject:** follow up/DS1 capable loop issue

In response to your request for details, Eschelon provides the following enclosures. The first enclosure is a summary of the Arizona service inquiry (held order/no build) orders. The next enclosure is the backup detail behind that summary. The third enclosure is a high level summary of examples of the many ways in which this has had a serious adverse impact on Eschelon's business and on end user customers.

Qwest held a conference call with CLECs today about its special construction ("CRUNEC") process. The fourth enclosure is a proposal that 12 CLECs in Qwest territory made with respect to the CRUNEC process before the call. Qwest made its own proposal, which involved "interim" suspension of some but not all of the CLEC-impacting changes that Qwest has made since June 16th. We won't know the extent or impact of the "suspension" until some time after Qwest implements it on August 20th. Also, the suspension is only "interim." While the suspension is pending, CLECs will not be able to document and track data and examples that would be evidence of the problem. As soon as Qwest receives 271 approval, however, Qwest could simply re-implement the same unilateral changes, and the numbers of service inquiry/no build held orders would jump again.

Qwest's violations of process, ICAs, SGAT terms, and commitments to the FCC and state commissions should not be ignored because Qwest temporarily suspends the changes (which it calls a mere "clarification") while 271 is pending. Qwest should be prevented from doing this again, because of the adverse impact on CLECs, end user customers, and competition.

I will be out next week. If you need additional information next week, please call Jeff Oxley at 612-436-6026. Otherwise, please call me if you need anything, after the 26th, when I will be back in the office. Thanks,



12-CLEC Proposal  
for today's c...

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

## DS1 Capable Loop and DS1 EEL Held Order Fact Sheet

- Eschelon provides T-1 voice and data service over DS1 capable loops and DS1 EELs.
- From January 1<sup>st</sup> to June 15<sup>th</sup>, 3 DS1 circuits in Arizona were held for “Service Inquiry” or lack of qualified facilities.
- From June 15<sup>th</sup> to August 12<sup>th</sup>, 26 DS1 circuits in Arizona were held for Service Inquiry. The detail for these 26 circuits is contained in the attached spreadsheet.
- The table below demonstrates that Qwest is refusing to provision a significant percentage of Eschelon orders and that the problem is getting worse in August.<sup>43</sup>

State	July Percentage of Circuits Held for Service Inquiry/ Qwest No Build Policy	August Percentage of Circuits Held for Service Inquiry/Qwest No Build Policy
Arizona	56.67%	70.00%
Colorado	24.39%	57.14%
Minnesota	19.23%	7.14%
Oregon	23.08%	16.67%
Utah	12.90%	0%
Washington	19.23%	25%
Regional	26.35%	32.26%

- A single DS1 circuit can carry up to 24 access line equivalents (ALEs).
- A customer ordering a T-1 product from Eschelon may frequently orders additional analog lines that Qwest’s refusal to deliver DS1 circuits will impact.
- In the six states in the Qwest region that Eschelon operates in, over 1,500 ALEs have been impacted by Qwest’s refusal to deliver DS1 circuits.

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<sup>43</sup> Service Inquiry notifications are received several days after an order is submitted. It is likely that more Eschelon orders submitted in August will receive Service Inquiry jeopardies. Even though the percentage of circuits going held already demonstrates an increased percentage in August, this data, if anything, underestimates the magnitude of the problem.

Purchase Order Number	Local Service Request ID	Qwest Order #	Circuit ID	Order Submission date	Requested Due Date	Date Firm Commitment Received
AZ297179T1FAC	7178976	N21709334	19HCFU004435MS	06/16/03	06/23/03	
AZ298684T1FAC	7223873	N21495160	19HCFS004478MS	06/19/03	06/26/03	
AZ299110T1FAC	7243757	N22652126	19HCFU004492MS	06/23/03	06/30/03	
AZ299269T1FAC	7267315	N22596005	19HCFU004497MS	06/24/03	07/01/03	
AZ299791T1FAC	7277391	N22659689	19HCFU004503MS	06/25/03	07/02/03	
AZ301239T1FAC	7338847	N23454357	19HCFU004552MS	07/01/03	07/08/03	
AZ300795T1FAC	7348978	N/A	19HCFS004564MS	07/02/03	07/11/03	
AZ302537T1FAC	7373867	N24596715	19HCFS004584MS	07/07/03	07/14/03	
AZ302226T1FAC	7374082	N23713233	19HCFU004569MS	07/07/03	07/14/03	
AZ303112T1FAC	7404014	N24320502	19HCFS004611MS	07/08/03	07/15/03	
AZ302892T1FAC	7388843	N23716094	19HCFU004596MS	07/08/03	07/16/03	
AZ303315T1FAC	7392632	N23780589	19HCFU004603MS	07/08/03	07/16/03	
AZ300515T1FAC	7426792	N24765684	19HCFS004624MS	07/10/03	07/17/03	
AZ304534T1FAC	7481046	N24161676	19HCFU00465MS	07/16/03	07/23/03	
AZ305365T1FAC	7480109	N24423872	19HCFU004654MS	07/16/03	07/23/03	
AZ304755T1FAC	7494012	N24426711	NONE PROVIDED	07/17/03	07/24/03	
AZ309407T1FAC	7513084	N24537010	19HCFU004683MS	07/18/03	07/25/03	
AZ309194T1FAC	7506514	N24287659	19HCFS004703MS	07/18/03	07/25/03	
AZ308439T1FAC	7513301	N20874566	19HCFS004727MS	07/18/03	07/25/03	
AZ315262T1FAC	7629669	N25587168	19HCFU004824MS	07/30/03	08/11/03	
AZ318756T1FAC	7699235	N26992882	19HCFU004873MS	08/06/03	08/14/03	
AZ319960T1FAC	7708131	N25990650	19HCFU004881MS	08/07/03	08/14/03	
AZ308367T1FAC	7699410	N27010760	19HCFU000150MS	07/16/03	08/06/03	
AZ320431T1FAC	7737726	N26408547	NONE PROVIDED	08/11/03	08/18/03	
AZ319578T1FAC	7701298	N25929543	19HCFU004878MS	08/06/03	08/22/03	
AZ320614T1FAC	7737572	N26408512	NONE PROVIDED	08/11/03	08/21/03	



**Qwest DS1 Held Orders  
Examples of Impact on Eschelon Telecom  
August 15, 2003**

- ◆ **Eschelon Order Process:** Since Qwest changed its DS1 ordering process, Eschelon is forced to place two orders with Qwest. Eschelon places an initial order for the DS1. When Qwest places the loop in service inquiry status (i.e., hold for no build), Eschelon provisioners must place another order via private line/special access. The result is double work by Eschelon provisioners and additional work by Eschelon's engineers, translators and customer service personnel. In addition, Eschelon must expend resources to document and track Qwest order activity for two orders, re-engineer the customer circuit, and reschedule the installation timeframes with the customer. This has a negative impact on resources and overall order throughput.
- ◆ **Customer Impacting:** The dual orders required by Qwest has negatively impacted the Eschelon customer experience. Customer installation timeframes have been extended by a minimum of two weeks. We have had several instances in which customers were physically moving their business and were without phone service because the DS1 order was held. Eschelon installed temporary private lines. Eschelon's credibility with the customer is tarnished from the onset because Qwest prevents Eschelon from delivering what was originally proposed.
- ◆ **Impact on Cash:** Eschelon is incurring additional expense because Qwest's policy change forces Eschelon to order private lines, which carry higher monthly and non-recurring charges. In addition, Qwest has said that it plans to charge a quote preparation fee, which can range from \$600-\$1600 per circuit, plus construction charges which have yet to be determined. These inflated rates make it virtually impossible for Eschelon and other CLECs to compete in the DS1 arena. The delay in installation is also lost revenue.
- ◆ **Marketing Strategy Change:** The Qwest held order process has forced Eschelon to temporarily shift its acquisition strategy from T-1 to analog sales. As a result, Qwest has forced Eschelon to modify its compensation plan to discourage T-1 sales. Eschelon loses customers that desire T-1 service, and those customers lose the ability to have their carrier of choice.
- ◆ **Increased Cancel Orders:** Eschelon has experienced a significant increase in customer initiated cancelled orders as a result of the held orders.
- ◆ **Engineering Expense & Resources:** Because an additional private line is being ordered, two access points of termination ("APOTs") are tied up, when parallel orders

are placed: one for the original DS1 order and one for the private line order. This takes up an additional Line Equipment Number (“LENs”) on a switch, and there are only so many LENs per switch. This consumes a needed resource (so parallel orders are not always possible). In addition, Qwest’s policy change has increased Eschelon’s Network Operations group’s workload. Engineering is required to connect to an additional APOT for the private line and then disconnect the original order. This is in addition to the double work done for provisioning.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Monday, September 15, 2003 6:49 PM  
**To:** 'Jodi.Smith@usdoj.gov'  
**Subject:** DS1 capable loop - Eschelon supplemental comments to CMP

Here are additional comments that Eschelon sent to Qwest CMP regarding the status of the DS1 capable loop issue after the AZ 271 hearing on Monday.

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** [bjjohnson@eschelon.com](mailto:bjjohnson@eschelon.com) [SMTP:bjjohnson@eschelon.com]  
<<mailto:bjjohnson@eschelon.com>>  
**Sent:** Thursday, September 11, 2003 9:26 AM  
**To:** [bjjohnson@eschelon.com](mailto:bjjohnson@eschelon.com)  
**Subject:** PROS.08.27.03.F.01173.DS1CapableLoop\_IntProc --- ---

Thank you for submitting your comments through the Qwest CMP Document Review and Comment Process.

The information you entered is listed below.

If you have any questions, please direct them to [cmpcomm@qwest.com](mailto:cmpcomm@qwest.com).

=====

Notice Number: PROS.08.27.03.F.01173.DS1CapableLoop\_IntProc

Document Name:

Document Version Number:

Document History Log Line Number:

Comment:

Eschelon submitted comments on this notice on August 29, 2003. The deadline for comment is not until September 11, 2003, and Eschelon submits these timely supplemental comments on this issue.

At an Open Meeting on September 8, 2003 in Arizona, the AZ Commission voted to approve an Order containing the following language:

“109. Staff agrees with Eschelon with respect to the recently imposed construction charges on CLECs for line conditioning. Staff is extremely concerned that Qwest would implement such a significant change through its CMP process without prior Commission approval. As noted by AT&T, during the Section 271 proceeding, the issue of conditioning charges was a contested issue. Language was painstakingly worked out in the Qwest SGAT dealing with the issue of line conditioning which Qwest’s new policy is at odds with. Staff recommends that Qwest be ordered to immediately suspend its policy of assessing construction charges on CLECs for line conditioning and reconditioning and immediately provide refunds to any CLECs relating to these unauthorized charges. Qwest should reinstitute its prior policy on these issues as reflected in its current SGAT. If Qwest desires to implement this change, then it should notify the Commission in Phase III of the Cost Docket, but must obtain Commission approval of such a change prior to its implementation. To the extent Qwest does not agree to these conditions, Staff recommends that Qwest’s compliance with Checklist Items 2 and 4 be reopened. We agree with Staff.”

In addition, at the same Open Meeting, counsel for Qwest agreed to return “100%” to the processes in place before June 2003. (This is in addition to the representation that Qwest made to the AZ Commission at the 8/21/03 Open Meeting that “everything is going back to the way it was before June 15.”) (Tr. p. 40, lines 22-24)). Before June 15, Qwest had in place a non-interim process that resulted in a low level of jeopardy notices for service inquiry/no build. Eschelon’s expectation, based on the AZ Order and Qwest’s representations to the Commission, is that the non-interim process is in place, and levels will return to where they were before June 15. In addition, Eschelon expects that Qwest will seek prior Commission approval before attempting to make such changes in the future.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, September 16, 2003 9:45 AM  
**To:** 'Jodi.Smith@usdoj.gov'  
**Cc:** Oxley, J. Jeffery  
**Subject:** additional issues

Peter Gray had left a message asking about any other issues. I left him a message indicating that, given the fact that the FCC has already approved Qwest in 13 other states and limited resources, we may not be filing comments. That does not mean that Eschelon does not object to 271 approval, but Eschelon has to be realistic about the likely outcome in a resource short world. I don't have Peter's email address. Perhaps you could forward this to him, in case he has questions

I also indicated in my message that Eschelon does have other issues:

1. OSS - essentially the same issues as MCI (see enclosed letter).
  - a. Reject Rates (2nd paragraph): Eschelon uses EDI for loop orders and GUI for off-net orders. We checked a recent week, and we also had approximately 44% reject rates for EDI. For the GUI, there is an up-front edit so there is no count. We do get many of these.
  - b. MCI #1 - Insufficient documentation to require Qwest to correct software defects impacting LSR processing within specified timeframes. This is a significant issue for us. On 8/29/03, the CLECs (including Eschelon) voted unanimously in favor of MCI's proposed language, but Qwest voted no. In CMP, Qwest has essentially a veto power. This is a significant issue for CLECs, but Qwest has made no commitment to do anything about it.
  - c. MCI#2 - Migrate by TN - (This issue is mentioned in paragraph 23, p. 8, lines 11013 of the Staff's AZ 271 Proposed Order, recently adopted by the AZ Commission. Eschelon also asked for this capability. Eschelon has not implemented use of it yet; it has observed the problems MCI is having with it. When Qwest implements a systems change, it should have the processes in place to account for the change. In the Proposed (now adopted Order), the Staff states that Qwest has verified this issue has been resolved in CMP, but that is not the case.
  - d. MCI #3 - Migrate as specified - Eschelon asked for a solution to the "mapping" problem described in paragraph 24, p. 8, lines 9-11, in the AZ 271 case in September of 2000. Although Qwest said it was finally delivering an "end state" view, Qwest did not do so for features that drive blocking and hunting requests. These are in demand, needed features. Without these, there really is no true end state (i.e., when the provisioner does not have to look at what was previously on the line but instead can deal with what is being requested). In the Proposed (now adopted Order), the Staff states that Qwest has verified this issue has been resolved in CMP, but that is not the case.
  - e. MCI #4 - Reason for high reject rates - A check of recent loop (EDI) orders showed that approximately 1/3 of the rejects were due to the service address validation issue. For the GUI, there is an up-front edit so there is no count.



f. MCI #5 - Multiple CSRs for subsequent order activity - Eschelon uses EDI for loops at this time, and there isn't much subsequent order activity with loops. With the GUI, the issue is somewhat different, although CLECs do still have to select a CSR from multiples. Eschelon will have this same problem for its off-net orders once it moves to EDI.

2. PO-20 (comparison of service orders to LSRs for service order errors): Service order errors remain a significant problem. As a result of CRs submitted by Eschelon to CMP, Qwest has finally documented many of its processes requiring manual handling. In its current form, however, PO-20 is worse than having no measure at all. Qwest has created an exception (for "CFLAGs" and later "PIA") that swallows the rule. If there are ten errors on a service order, only one of which is associated with a CFLAG, Qwest will count the error as accurate, despite the nine other errors. This will result in masking the problem, because Qwest's results will show positive performance when in fact service order errors exist that are not being counted.

3. Other complaints/issues/DUF: The FCC said (in its Order, 02-314, 12/20/02, paragraph 130 & note 481) that Eschelon could pursue its issues against Qwest in other settings/through dispute resolution, even if the FCC does not recognize the issue as a 271 issue. [Eschelon has disputes that are not yet formal complaints but may become complaints. (For example, Eschelon has a dispute pending with Qwest in the amount of approx. \$700,000 relating to the SS7 issues that are the subject of several complaints against Qwest. (See separate email.))]

a. Eschelon has complaints pending against Qwest in federal court and before state commissions. Other CLECs also have filed complaints against Qwest. (I'll forward an email listing matters by Eschelon and other CLECs separately).

b. For example, Eschelon has a complaint pending in federal court against Qwest on the DUF/missing minutes issue. (Copy enclosed in separate email on pending matters.)

c. PrairieWave (fka McLeodUSA) has submitted a settlement agreement for approval in some of its states. The motion to approve the settlement agreement states that "The Agreement resolves the dispute in this Docket exclusively between Qwest and PrairieWave." At least one of the terms, however, is an ongoing obligation that Eschelon and perhaps other CLECs would like to take advantage of as well. Eschelon believes that Qwest's agreement to provide an "additive" to PrairieWave confirms Eschelon's long-standing assertion that Qwest's usage has been understated. Eschelon sent an email (excerpt copied below) to Qwest (Nancy Batz) on 9/4 asking whether Qwest will also provide the additive to Eschelon/other CLECs, but Qwest has not responded.

From 9/4 Eschelon email to Qwest:

"I was reviewing the Settlement Agreement between PrairieWave Communications Inc. vs Qwest Corporation [MN PUC Docket No. P-421-CO2-1439 and South Dakota PUC Docket No. CT02-039], and I noticed part of the settlement related to TUT record processing.

Specifically, in Exhibit A, Steps to Assign Local/Toll Jurisdiction, Section 4 Determine Toll MOU to be billed to Qwest, it states:

"a. Total Toll MOU billed to Qwest will be based on the MOU recorded in the Qwest Terminating Usage Tracking (TUT) reports or from Clearinghouse for Access Records Distribution System (CARDS), depending on which is available.

b. An ILEC Additive will be added to the TUT MOU to account for the MOU that are PIC'd to Qwest by customers who reside in non-Qwest exchanges. The additive in

MN is 52%. This additive is subject to periodic change to reflect approximations of ILEC originated/Qwest PIC'd calls."

Qwest provides Eschelon with a TUT usage spreadsheet for Qwest carried intraLATA toll traffic terminating to lines served by Eschelon switches. However, Eschelon has always believed this usage is understated and have advised Qwest of this belief in the past.

Can you confirm the following:

1. Does Eschelon receive this "additive" for Qwest carried intraLATA toll traffic originated by non-Qwest local exchange customers? If not, please explain why. If so, please advise Eschelon what this additive is in each state for Eschelon traffic. Also, if so, why isn't this additive reflected on the toll usage report you provide.

2. For UNE-P terminating traffic, is Eschelon receiving usage records for Qwest carried intraLATA toll traffic originated by non-Qwest local exchange customers and terminating to an Eschelon UNE-P line?"

Please call me if you have any questions.

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126



August 26, 2003

**Thomas F. Dixon**  
Senior Attorney  
Western Public Policy  
707 17<sup>th</sup> Street  
Suite 4200  
Denver, CO 80202  
303 390 6206  
Fax 303 390 6333  
888 475 7218  
Thomas.F.Dixon@wcom.com

William Mundell, Commissioner  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

Re: Docket No. T-00000A-97-0238, Qwest's 271 Application

Dear Commissioner Mundell:

I have been advised by the Commission Staff that during the open meeting held August 21, 2003, you asked if anyone knew of any problems that had arisen with Qwest Corporation's ("Qwest") operation support systems ("OSS") in other states since its 271 applications were approved.

MCI's overall mass market (consumer) local exchange carrier ("LEC") reject rate for orders submitted was 15.4% for all Bell operating companies combined for the week ended August 15, 2003. The Qwest reject rate dropped below 30% for the first time that week to 28.4%. The overall small business market LEC reject rate was at 41.3%. The Qwest reject rate for small business orders was 40.7%. Below is a summary of our most recent experiences with Qwest's OSS and OSS documentation that impacts rejection of our orders in Qwest's OSS.

1. Intermediated Access ("IMA") is the method provided by Qwest for CLECs to access Qwest's OSS and process local orders. IMA solely impacts CLECs ordering practices and is not used by Qwest's retail side of its business. The current Change Management Process ("CMP") document lacks sufficient language to require that within specific timeframes Qwest correct software defects when the defect impacts CLECs' abilities to process local service requests ("LSRs"). Without such language, CLECs have no guarantees from Qwest that software defects will be fixed in a timely manner. A defect in the software means the system is not working in accordance with Qwest's published business rules. In turn, when a defect is identified, it is inappropriate for Qwest to simply update the document accordingly because it then places the burden on CLECs to adjust coding they implemented based on the prior documented business rules. In April 2003, MCI initiated a change request through CMP to provide such language that will be subject to a unanimous vote. It is anticipated that Qwest will reject the change request based upon attempts to negotiate a resolution through the CMPO process.

2. Qwest must synch up system edits with those being performed manually by their Interconnect Service Center ("ISC") personnel. Qwest implemented a system change request that would allow migration order types (UNE-P migrations) to be processed by entering the telephone number and house number only. The intent of the "migrate by TN" change request was that less information would be required on the order than was required prior to the change that would result in less rejects for CLECs. After implementation, MCI saw a significant increase in migration order manual rejects and noted that the ISC personnel were editing more than what was required. A process change was implemented by Qwest after MCI provided examples of the out of synch condition between systems/manual processing of LSRs. A process must be established by Qwest to synch up system and manual edit processing. Qwest has agreed that the process is necessary, but there is no formal commitment to begin.

3. When Qwest implemented what was expected to be Industry Standard "migrate as specified" ordering requirements, it neglected to provide "end-state" view requirements for features that drive blocking and hunting requests. In accordance with a Z-tel change request, Z-Tel requested "the ability to migrate customers as specified without having to list changes to the customer's current feature set." Qwest continues to require a distinction be made between what exists and what is changing for blocking and hunting features.

4. When Qwest system edits are not documented or documented incorrectly, CLEC local orders are either rejected and/or incorrectly provisioned. MCI recently discovered a Qwest back-end system edit that is attempting to validate complete address information that is not required under Qwest published business rules. The edit requires address information be an exact match to what is listed in Qwest PREMIS database and can be retrieved via a preorder service address validation ("SAV") query. Not only are the address fields not supposed to be edited, but CLECs are not and should not be required to perform an SAV preorder query because it increases order processing timeframes. Moreover, an update to documentation would place the burden on CLECs to make system changes to accommodate what should have been documented correctly in the first place.

Another significant issue that can result when documentation is not adequately reflecting how the system is working is requested end user services are not provisioned. Qwest recently determined that blocking features are required to be provided in alphabetical order because that is how the system "expects" blocking features. If blocking features are not provided in alphabetical order, Qwest may only provision those that are provided for in alphabetical order, thus an out of synch condition may exist between what was requested and what Qwest provisioned. At this time the impact of this problem is unknown but Qwest was requested to provide analysis between LSR requests and Service Orders provisioned to determine the impact.

5. Qwest cannot provide to CLECs the most current customer service record ("CSR") because it maintains retail CSRs as "live" until the end user's bill is rendered, paid and posted to Qwest billing system. When a CLEC migrates a local customer,

Qwest houses two active customer service records. One with Qwest retail information and one that is generated for the CLEC when the customer migrates. The IMA system determines which CSR is valid per order by the use of a customer code identifier internally tracked by Qwest. If the CLEC is requested by the end-user to change and/or correct what was provisioned, CLECs must distinguish which CSR is the customers and provide the valid customer code or the order will reject. MCI initiated a change request to eliminate multiple match conditions (SCR102202-01 - Customer Service Record) on October 22, 2002. While Qwest implemented changes to reduce multiple CSR scenarios, it did not address the intent of the original request which referenced the largest impact to CLECs. That is post migration when CLECs are most impacted by multiple CSR conditions 100% of the time until Qwest rendered, billed and posted the retail end user's final bill. Thus, MCI continues to see a large volume of rejects that are a result of multiple match CSR conditions.

A copy of this letter is being docketed and sent to all parties on the service list and being e-mailed to parties as well.

Sincerely yours,

Thomas F. Dixon

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, September 16, 2003 2:49 PM  
**To:** 'Jodi.Smith@usdoj.gov'  
**Cc:** Oxley, J. Jeffery  
**Subject:** DS1 capable loop update

A problem has arisen with respect to the DS1 capable loop issue. Qwest has said that it will convert the lines that CLECs had to order as private lines (because of Qwest's invalid CRUNEC policy) to DS1 capable loops to help remedy this situation. Now that Eschelon has attempted to take Qwest up on that commitment, however, Eschelon has found that Qwest's process does not work. The process on the web (which Qwest told Eschelon it had used to perform "thousands" of such conversions) is too high level and does not provide enough information to convert the lines. Qwest provided a more detailed process to Eschelon, but it did not work. It appeared that Qwest had not notified or trained its centers on the process. The circuit id numbers, for example, are supposed to change from the private line id to the DS1 capable loop id, but didn't do so. Qwest only processed 3 orders under that process.

Qwest provided a second detailed process to Eschelon. That process doesn't work either, and conversion orders are at a standstill. (Qwest is requiring CLECs to submit LSRs to convert the lines, even though CLECs have already had to submit two LSRs for these lines -- one for the rejected DS1 capable loop order and another for the private line. This third LSR submission is more work and expense that Qwest's invalid policy has placed on CLECs.) It appears that Qwest is saying that the second process doesn't work because Qwest, in developing it, did not account for the differences between EDI and GUI users and the different versions of those. A Qwest edit in IMA is preventing the orders from executing.

Eschelon needed to get all of the conversion LSRs submitted ASAP so that this issue does not continue to affect later months. Now, however, there is a delay while Qwest tries to establish a working process. When developed, it should be documented and accessible to CLECs so other CLECs don't have to have these problems as well.

Although Qwest is indicating that it is converting the private lines to DS1 capable loops, the process doesn't work at this time.

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Wednesday, September 17, 2003 12:03 PM  
**To:** Wagner, Kim K.; Goldberg, Tobe L.  
**Subject:** FW: Pending matters against Qwest

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, September 16, 2003 9:47 AM  
**To:** 'Jodi.Smith@usdoj.gov'  
**Subject:** Pending matters against Qwest

Enclosed is a document that Eschelon filed with the AZ Commission on 9/8/03, listing pending and recently decided matters against Qwest.



Pendingmatters.doc

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

**PENDING/RECENTLY DECIDED MATTERS**

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, September 02, 2003 5:50 PM  
**To:** 'TBERG@FCLAW.com'  
**Subject:** FW: matters in other states/supplementing record

We have been told that Andy may be out of the office, so we are forwarding to you on behalf of Qwest.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Tuesday, September 02, 2003 5:38 PM  
**To:** 'Crain, Andrew D'  
**Cc:** Maureen Scott; dpozefsky@azruco.com; rhip@bellatlantic.net; hagoodb@bellsouth.net; MJR@CC.STATE.AZ.US; RLB@CC.STATE.AZ.US; thc@lrlaw.com; jsburke@omlaw.com; mpatten@rhd-law.com; jcrockett@swlaw.com; thomas.f.dixon@wcom.com; 'Wolters, Richard S (Rick) - LGCRP'; 'Watkins, Gene'  
**Subject:** matters in other states/supplementing record

Andy:

Eschelon noticed the following exchange in the Transcript from the AZ 271 open meeting held on August 21, 2003:

Commissioner Mundell: "Are there matters pending in any other commissions in the other 13 states?" (Tr. p. 43, lines 17-19)

Mr. Crain: "We're well aware that that will continue in the future, and other than this DS1 issue, I don't know of anything else that has been filed with those commissions." (Tr. p. 44, lines 13-15)

Commissioner Mundell: "Once you have a chance to go back to your office and think about it, if you want to supplement your statement, that will be fine." (Tr. p. 44, lines 17-19)

As part of supplementing the record as to other matters pending in other commissions, perhaps Qwest would consider the following matters. (Some enclosures/URLs are provided as a convenience, though Qwest should have complete info/status):

MN Docket No. P-421/C-03-683 (Eschelon Complaint re. Qwest's Refusal to Honor Contractual and Legal Obligations)



Complaint MN  
DMOQ.doc



Complaint --  
Markert Aff -- 5-...

MN Docket No. P-421/C-03-627 (Eschelon Complaint re. EEL issue and McLeod opt-in) [Letters of intent to file similar complaints have been filed in WA and CO. AZ complaint will also be filed soon.]



AGO\_DOCS-#8967  
00-v1-Eschelon\_Q...



Qwest complaint  
final.doc



WA Federal Court (Western District) Docket No. C03-1296R (Eschelon Complaint re. access charges/missing access records in AZ, CO, MN, OR, UT, and WA, DSL, and failure to provide automatic conversion)



430082.2.doc

MN Docket No. P421/C-02-1439 (McLeod/Prairie Wave Complaint Against Qwest for failure to pay Switched Access Charges)

<http://www.puc.state.mn.us/docs/orders/02-138.pdf>

MN Docket No. P-421/C-03-616 (Eschelon Request for an Investigation Regarding Customer Conversion by Qwest and Regulatory Procedures)



03-0091.url



DrHaarltrApr1803.doc

Eschelon letter to Qwest regarding CO and MN outages/potential sabotage



TTaylor Outage  
aug03.doc



Denver BDFB  
Pics.ppt

MN Docket No. P421/C-03-1024 (Velocity Telephone Complaint against Qwest re. Qwest's Anti-Competitive Conduct - improperly failing to provision dark fiber, improperly refusing to provide interconnection, and improperly refusing to provide meet point transport at parity with Qwest's interoffice transport)

<http://www.puc.state.mn.us/docs/orders/03-0085.pdf>

MN Docket No. P-421/C-03-1024 (Desktop Media Complaint Against Qwest)

<http://www.puc.state.mn.us/docs/orders/03-0085.pdf>

OR Order Nos. 03-462 & 03-269 (Metro One Telecom Complaint Against Qwest for breaching interconnection agreement; Commission found Qwest must provide access to UNEs at cost-based rates, including the UNE Directory Assistance listings (DAL))

<http://www.puc.state.or.us/orders/2003ords/03%2D462.pdf>

NE Nos. FC-1296 & FC-1297 (Cox Nebraska Telecom, ALLTEL, Illuminet Against Qwest re. SS7)

ID Docket No. QWE-T-02-11 (Idaho Telephone Association, Citizens, CenturyTel, Potlatch and Illuminet Complaint Against Qwest re. SS7)

<http://www.puc.state.id.us/fileroom/telecom/qwe-t-02-11/qwe-t-02-11.pdf>

IA Docket No. FCU-03-24 (U.S. Cellular, Cox Iowa Telecom, and Illuminet Complaint Against Qwest re. SS7)

FCC, 8/4/03 Letter by Mountain Telecommunications to FCC Requesting involvement of Enforcement Bureau with resolution of dispute re. SS7.

MCI 8/26/03 Letter to AZ commission re. OSS issues



tom's  
stationery.doc

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Sunday, September 07, 2003 12:27 PM  
**To:** 'ewoodcock@perkinscoie.com'  
**Subject:** 2 additional matters

In addition to the matters listed in my earlier email, here are two more:

Multi-state arbitration & related court case regarding arbitration procedure (New Access Complaints regarding winback/wholesale pricing, credits, including MN finding relating to access/DUF files) (AAA arb. No 77 Y 181 00316 VSS, CO Dist Ct. No. 03-N-1278

SD Docket No. T02-0389 (McLeod/Prairie Wave Complaint Against Qwest for failure to pay Switched Access Charges)

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
730 2nd Ave. South, Suite 1200  
Minneapolis, MN 55402  
Phone: 612-436-6026  
Fax: 612-436-6126

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Saturday, September 06, 2003 9:29 AM  
**To:** 'ewoodcock@perkinscoie.com'  
**Cc:** 'Maureen Scott'; 'dpozefsky@azruco.com'; 'rhip@bellatlantic.net'; 'hagoodb@bellsouth.net'; 'MJR@CC.STATE.AZ.US'; 'RLB@CC.STATE.AZ.US'; 'thc@lrlaw.com'; 'jsburke@omlaw.com'; 'mpatten@rhd-law.com'; 'jcrockett@swlaw.com'; 'thomas.f.dixon@wcom.com'; 'Wolters, Richard S (Rick) - LGCRP'; 'Watkins, Gene'; 'TBERG@FCLAW.com'  
**Subject:** FW: matters in other states/supplementing record

Beth:

Mr. Berg has not responded to the emails below. We would appreciate it if you could provide a response.

-----Original Message-----

**From:** Clauson, Karen L.  
**Sent:** Wednesday, September 03, 2003 4:32 PM  
**To:** 'Crain, Andrew D'; 'TBERG@FCLAW.com'

**Cc:** 'Maureen Scott'; 'dpozefsky@azruco.com'; 'rhip@bellatlantic.net'; 'hagoodb@bellsouth.net'; 'MJR@CC.STATE.AZ.US'; 'RLB@CC.STATE.AZ.US'; 'thc@lrlaw.com'; 'jsburke@omlaw.com'; 'mpatten@rhd-law.com'; 'jcrockett@swlaw.com'; 'thomas.f.dixon@wcom.com'; 'Wolters, Richard S (Rick) - LGCRP'; 'Watkins, Gene'

**Subject:** RE: matters in other states/supplementing record

Andy/Tim:

Are you supplementing the record with these (and any other) matters? It would be helpful to know before the open meeting on Friday. If you mail by regular mail, I may not get it before then, so was wondering if you could let me know. Thanks.

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

**LeRoy Koppendraye  
R. Marshall Johnson  
Gregory Scott  
Phyllis Reha  
Ellen Gavin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

In the matter of the Complaint of Eschelon  
Telecom of Minnesota, Inc. against Qwest  
Corporation, formerly known as U S West  
Communications, Inc.

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Docket No. P \_\_\_\_\_

**COMPLAINT AGAINST QWEST  
CORPORATION, AND REQUEST  
FOR EXPEDITED PROCEEDING  
PURSUANT TO MINN. STAT. 237.462**

Eschelon Telecom of Minnesota, Inc. ("Eschelon") hereby brings this Complaint, consisting of  
two separate issues, against Qwest Corporation ("Qwest") and alleges as follows:

**INTRODUCTION AND PARTIES**

1. Eschelon files this Complaint with the Minnesota Public Utilities Commission ("MPUC" or "Commission") in order to obtain immediate relief from the refusal of Qwest to honor its contractual and legal obligations to Eschelon, thereby injuring Eschelon, Minnesota consumers, and the development of a competitive telecommunications marketplace in Minnesota. Eschelon's Complaint alleges significant overcharges by Qwest for collocation non-recurring rates, and Qwest's withholding of DMOQ billing credits from Eschelon.

2. Specifically, Qwest overcharged Eschelon for non-recurring rates for 40 amp feeds and space preparation fees when Eschelon built its collocations in Minnesota in 1999 and 2000. Eschelon is due a refund of \$425,959, plus interest, from Qwest, which Qwest has refused to pay. In addition, Qwest has refused to provide Eschelon with all of the DMOQ billing credits due under the Parties' February 2000 Stipulation and Agreement and August 25, 1999 Interconnection Agreement. Eschelon is due \$105,048, plus interest, in DMOQ billing credits from Qwest related to UNE-E billing inaccuracies from March 2002 through December 2002.

3. Due to the continuous nature of Qwest's violations of law related to these issues, Eschelon requests that the Commission order an expedited hearing pursuant to Minn. Stat. § 237.462, Subd. 6.

4. Eschelon requests such relief as may be just and reasonable and in accordance with applicable Minnesota and federal law, including, without limitation, the initiation of a complaint and investigation by the Commission pursuant to Minn. Stat. § 237.081, Subd. 1(a); the issuance of an administrative penalty order by the Commission pursuant to Minn. Stat. § 237.462, Subds. 1 and 2; the issuance of an Order requiring Qwest to refund \$425,959, plus interest, in collocation overcharges; the issuance of an Order requiring Qwest to refund \$105,048, plus interest, in DMOQ billing credits for March through December 2002; the issuance of an Order requiring Qwest to include in its DMOQ credit calculation for billing accuracy beginning in March 2002, and going forward, all UNE-E bills inaccurately billed at resale rates; and such other relief as the Commission deems appropriate.<sup>44</sup>

5. Eschelon is a competitive local exchange carrier ("CLEC") providing local and interexchange telecommunications services in Qwest's service territory in Minnesota, primarily serving small business customers.

6. Eschelon's principal place of business is 730 Second Avenue South, Suite 1200, Minneapolis, Minnesota 55402. Eschelon is certified to provide local exchange service in Minnesota pursuant to Orders of the MPUC, dated July 18, 1996 and April 12, 1999.

7. Eschelon is represented in this proceeding by its attorney:

Brent Vanderlinden, Attorney  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402-2456  
Telephone: (612) 436-6287  
Facsimile: (612) 436-6387

8. Respondent Qwest is a Colorado corporation, with offices in Minnesota at 200 South Fifth Street, Minneapolis, Minnesota 55402. Qwest is an incumbent local exchange carrier ("ILEC") within the meaning of Section 251(h) of the Telecommunications Act of 1996 (the "Act"), and provides

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<sup>44</sup> Eschelon also reserves its rights to such private remedies as may be available pursuant to Minnesota law and recognized in Minn. Stat. § 237.462, Subd. 11.

local exchange, exchange access and inter-exchange services in Minnesota subject to the Commission's regulatory authority. Qwest is the dominant monopoly provider of local exchange service in Minnesota.

9. Eschelon has served Qwest with this Complaint through:

Jason Topp, Senior Attorney  
Qwest Communications  
200 South Fifth Street, Suite 395  
Minneapolis, Minnesota 55402  
Telephone: (612) 672-8904  
Facsimile: (612) 672-8911

Qwest Law Department  
General Counsel  
Inter-Connection  
1801 California Street  
51st Floor  
Denver, Colorado 80202

Qwest Communications Director  
Inter-Connection Compliance  
1801 California St., Room 2410  
Denver, Colorado 80202

### **JURISDICTION**

The MPUC has jurisdiction over this Complaint pursuant to 47 U.S.C. § 252(e) (authority of state commissions to enforce interconnection agreements), Minn. Stat. §§ 237.081, Subd. 1(a) (investigations), 237.462, Subds. 1 and 6 (competitive enforcement), the Agreement for Local Wireline Network Interconnection and Service Resale between Eschelon and Qwest, § 11.1 and the Stipulation and Agreement of the parties, Section F.

### **FACTUAL BACKGROUND**

#### **A. ESCHELON IS ENTITLED TO A REFUND OF \$425,959, PLUS INTEREST, FROM QWEST FOR NON-RECURRING COLLOCATION OVERCHARGES IN 1999 AND 2000.**

1. On or about October 4, 1999, the Commission approved an Agreement For Local Wireline Network Interconnection and Service Resale (the "Interconnection Agreement" or "Agreement") between Qwest and Eschelon. Relevant excerpts from a true and correct copy of the Interconnection Agreement and Amendments are attached as exhibits.<sup>45</sup>

2. The Parties' Interconnection Agreement provides that if the Parties cannot resolve a dispute they may apply to the Commission for resolution. Exhibit A-1, Part A, Section 11. The Agreement further provides that the Parties will seek expedited resolution by the Commission of any such dispute and

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<sup>45</sup> All Exhibits are exhibits to the Affidavit of William D. Markert appended as Attachment 1 to this Complaint.

shall request that resolution occur in no event later than 60 days from the date of submission of the dispute to the Commission. *Id.*

3. The Agreement includes a table for “Physical and Virtual Collocation Prices” which states that “Rates are interim and subject to true up based on further Commission proceedings.” Exhibit A-2.

4. On January 24, 2000, Qwest and Eschelon entered into the Second Amendment to their Interconnection Agreement. Exhibit A-3. The Amendment was filed with the Commission on January 27, 2000. The Amendment replaced the collocation terms and pricing in the Agreement with amended collocation terms and pricing. *Id.*, page 1. The Amendment reiterated the “interim/subject to true up” nature of the collocation rates with the following language:

USW will recover MPUC approved Collocation costs through both recurring and nonrecurring charges. . . . All costs will be those costs and cost elements approved by the MPUC . . . . To the extent that a rate element or rate is not allowed under the current MPUC rulings or in any MPUC Cost Order, the MPUC’s determination will govern.

*Id.*, Section 6.1.

5. In 1999 and 2000, Eschelon completed 15 collocation build-outs, for which Qwest billed (and Eschelon paid) \$397,557 in non-recurring charges for 40 amp power delivery. Exhibit A-4. Qwest’s charges were not based on Commission approved rates.

6. In its May 3, 1999, Order Resolving Cost Methodology, Requiring Compliance Filing, and Initiating Deaveraging Proceeding [Generic Cost Case], the Commission clearly stated that collocation prices are to be set following the AT&T/MCI collocation cost model (CCM).<sup>46</sup> Therefore, Qwest should have used the CCM to establish non-recurring charges for 40 amp power delivery. Had Qwest done so,

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<sup>46</sup> The exceptions – Fiber Splicing; Essential AC Power; Essential AC Power Feed; and Composite Clock – which the Commission authorized US West to price using US West's cost model, in a later order issued on March 15, 2000, are inapplicable in this case.

Eschelon would have been billed only \$11,718 in non-recurring charges for 40 amp power delivery to its 15 collocation build-outs. Exhibit A-4. Therefore, Eschelon is entitled to a refund from Qwest in the amount of \$385,839, plus interest. *Id.*

7. Four of Eschelon's fifteen collocation build-outs were cageless, for which Qwest billed (and Eschelon paid) \$41,804 in space preparation fees. Exhibit A-5. Had Qwest's charges been based on Commission approved rates, Eschelon would have been billed only \$1,684. *Id.* Therefore, Eschelon is entitled to a refund from Qwest in the amount of \$40,120, plus interest. *Id.*

8. In Docket No. P-421/C-01-1896, the Commission ordered Qwest to issue a refund of non-recurring collocation overcharges to Onvoy Inc., including 40 amp feeds and cageless collocation space preparation fees, plus 6% simple interest on the refund. Eschelon is seeking a refund in this Complaint based on the same rationale that Onvoy was awarded a refund. Therefore, Eschelon requests 6% simple interest on its refunds.

9. Eschelon detailed its refund request of non-recurring collocation overcharges for 40 amp feeds in a letter to Qwest, dated January 31, 2003. Exhibit A-4. On February 10, 2003, Eschelon reiterated this request to Patricia A. Engels, Executive Vice President of Wholesale Markets for Qwest. Exhibit A-6. Qwest denied the request in a letter from Ms. Engels, dated April 1, 2003. Exhibit A-7. In a phone conversation between Eschelon and Qwest on April 4, 2003, Eschelon discussed Qwest's overcharges for cageless collocation space preparation fees, as had been ordered for by the MPUC for Onvoy. To date, Qwest has not responded to or acted on these overcharges.

10. Qwest denied Eschelon's refund requests for non-recurring collocation overcharges based on a settlement agreement<sup>47</sup> between the parties, stating, "The settlement agreement between Qwest and Eschelon, dated April 2, 2001, settles fully all claims related to collocation non-recurring charges billed prior to March 1, 2001." Exhibit A-7 at 9. However, this statement is incorrect with respect to Eschelon's request for a refund of overcharges for 40 amp feeds and space preparation fees.<sup>48</sup>

11. The settlement resolved five categories of claims, the second of which addressed collocation charges. Exhibit A-8. Eschelon agreed to release Qwest from:

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<sup>47</sup> The "Confidential Second Amendment to Confidential/Trade Secret Stipulation," attached hereto as Exhibit A-8, is now a public document.



any claims that [Eschelon] can or could have brought against Qwest related to the following: . . . (b) for all periods prior to March 1, 2001, true-ups pursuant to decisions of the Minnesota Public Utilities Commission in Minnesota docket number P-442, 5321, 3167, 466, 421/CI-96-1540, including for collocation and unbundled network elements . .

*Id.* at 1-2. This language limited the settlement's coverage to collocation components that were explicitly priced in the Generic Cost Case.

12. Non-recurring collocation charges for 40 amp feeds and space preparation fees were not priced in the Generic Cost Case. In fact, in the Onvoy case, Qwest *expressly acknowledged* that non-recurring collocation charges for 40 amp feeds and space preparation fees were not priced in the Generic Cost Case. Exhibit A-9 at 8 ¶27, 10 ¶38 & fn 31, and 16 ¶62. Therefore, there is no legal or factual basis for Qwest's ongoing refusal to refund to Eschelon \$425,959, plus interest, for collocation overcharges

**B. ESCHOLON IS ENTITLED TO \$105,048, PLUS INTEREST, IN DMOQ BILLING CREDITS FROM QWEST FOR UNE-E BILLING INACCURACIES FROM MARCH 2002 THROUGH DECEMBER 2002.**

1. The Interconnection Agreement sets forth certain Direct Measures of Quality (DMOQs) for Qwest service, together with credits or other remedies if Qwest fails to meet those DMOQs. These remedies call for, among other things, Overall Performance Index credits to Eschelon as set forth in Attachment 11, Appendix B of the Agreement. Exhibit B-1.

2. Qwest and Eschelon also entered into a Stipulation and Agreement (Stipulation) on or about February 29, 2000. Exhibit B-2. The Commission accepted the Stipulation and Agreement in an Order, dated June 28, 2000. The Stipulation, among other things, amended the DMOQ provisions of the Parties' Interconnection Agreement.

3. The Stipulation provides for three metrics to be measured each month: (1) provisioning commitments met, (2) time to restore-out of service and (3) billing accuracy – adjustments for errors. Each of the three DMOQs is assigned a Performance Index Rating based on the level of compliance achieved by Qwest. The Performance Index Rating is then converted to a numerical value and an overall Performance Index is calculated on a monthly basis. Exhibit B-1 at 12-13, Exhibit B-2 at 3. If the overall Performance Index for the month is a negative number, this indicates that Qwest's overall performance for

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<sup>48</sup> Eschelon agrees that its refund request for collocation non-recurring charges for 20 amp feeds was resolved in the settlement agreement.

the month is less than the required objective; in which case the Performance Index is used as a percentage discount against the previous month's total bill from Qwest to determine the credit due to Eschelon. Exhibit B-2 at 3. The Stipulation requires Qwest to pay Eschelon's undisputed Overall Performance Credit claims within 30 days of submission by Eschelon.

4. Eschelon submitted claims to Qwest for performance billing credits for the months of March through June, 2002. Exhibit B-3. Qwest disputed each of these claims and refused to provide the credits claimed by Eschelon. After disputing these claims with Qwest for several months,<sup>49</sup> with no success, Eschelon submitted claims to Qwest for performance billing credits for the remainder of 2002. Exhibit B-3. In response, Qwest agreed to provide Eschelon with \$52,702 in undisputed DMOQ credits, but refused to include an entire category of billing errors in this calculation, namely UNE-Eschelon ("UNE-E") bill credits. Exhibit B-5. The amount of DMOQ credits withheld by Qwest from March 2002 through December 2002 totals \$105,048. Exhibit B-3.

5. The primary dispute concerns metric B-4, "Billing Accuracy-Adjustments for Errors". Under this metric the parties have agreed to divide the total revenue billed without error by the total billed revenue billed in the reporting period (month). Qwest has refused to provide DMOQ credits for UNE-E billing inaccuracies.

6. UNE-E is a product Qwest provides to Eschelon pursuant to the Eighth Amendment to the Parties' Interconnection Agreement (Amendment) entered into on or about December 4, 2000. Exhibit B-6. The Commission approved this Amendment in an Order, dated January 26, 2001. Pursuant to this Amendment, Qwest agreed to provide Eschelon with a platform product that Qwest initially referred to as UNE-Eschelon or UNE-E (and Qwest now refers to as UNE-Star). Eschelon purchased UNE-E as a substitute for UNE-Platform ("UNE-P"), Qwest's official platform product.<sup>50</sup>

7. Qwest agreed to convert Eschelon's resale base to UNE-E but indicated it could not complete the conversion for a few months. In the short-term, Qwest told Eschelon to order UNE-E through

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<sup>49</sup> The parties' exchange of correspondence concerning DMOQ credits is attached as Exhibit B-4.

<sup>50</sup> When Eschelon initially attempted to order UNE-P from Qwest in Minnesota, the product had numerous problems. When Eschelon placed trial orders, the orders resulted in denial and loss of features, unclear and changing processes and customer-affecting service problems. The problems were so severe that Eschelon could not utilize the product. In response to these problems, Qwest offered Eschelon a different product it called UNE-E.

the existing resale process. Under this temporary process, Qwest stated it would continue to bill Eschelon the resale rate and then compare the end-of-month billed revenues to the UNE-E rates and pay Eschelon the difference. Qwest continues to use this temporary process today – over two years after the UNE-E Amendment date – despite Qwest’s promises to develop a billing system to accurately bill Eschelon for UNE-E lines.

8. Qwest’s continued billing for UNE-E at the incorrect resale rate has resulted in Eschelon receiving inaccurate UNE-E bills each month and being required to expend a large amount of resources attempting to reconcile the bills with what should have been billed by Qwest. For each month in question, March 2002 through December 2002, Qwest has presented Eschelon with UNE-E bills that do not reflect any of the UNE-E rates in the UNE-E Interconnection Agreement Amendment.<sup>51</sup> Instead, the bills show rates that reflect the retail rate minus the wholesale discount. A UNE-E credit must then be determined by applying the UNE-E rates to the UNE-E product quantities Eschelon has ordered.

9. Because the bills from Qwest reflect resale rates, rather than UNE-E rates, literally 100% of Qwest’s UNE-E bills to Eschelon were inaccurate in 2002. This particular concern was raised by Eschelon in two recent regulatory proceedings. In the Minnesota Public Utilities Commission’s investigation of Qwest’s 271 filing, the Administrative Law Judge found “conclusively that UNE-Star does not meet the standards for a UNE-P offering (particularly with respect to billing accuracy . . .).” MN PUC Docket No. P-421/CI-01-1371, ALJ’s Report at 35, ¶ 100. Exhibit B-3. Likewise, in the Arizona Commerce Commission’s investigation of Qwest’s 271 filing, the ACC staff recommended that “Until the issue with embedded accounts is resolved, Qwest should be required to count [UNE-E billing] as an error or an inaccurate bill for purposes of calculating its billing measurements. ACC Docket No. T-00000A-97-0238, Staff Report at 47, ¶ 216. Exhibit B-3.

10. Despite the fact Qwest admits its UNE-E bills to Eschelon are inaccurate, it refuses to include these bills in the billing accuracy metric agreed upon by the parties. Qwest alleges that “Qwest and Eschelon have agreed upon the process for the migration of accounts over to UNE-P and were fully aware of the timeframe for the conversion process.” Letter from Vicki Keller to David Frame, dated August 20, 2002. Exhibit B-4. Qwest has stated that it will not include UNE-E billing inaccuracies in the DMOQ

credit calculation because it does not believe the UNE-E rate is being billed in error. *Id.* Qwest stated on November 14, 2002, and reiterated on April 1, 2003, that “Qwest will litigate this issue if necessary.” Exhibit B-4, Exhibit A-7 at 10.

11. Qwest has a duty to provide Eschelon with accurate UNE-E bills, regardless of whether UNE-E lines are eventually converted to UNE-P lines. The UNE-E Amendment expressly provides that it “may not be further amended or altered except by written instrument executed by an authorized representative of both Parties.” Exhibit B-6 at 2 ¶1.8. The UNE-E Amendment also expressly provides that, except as modified by the amendment, the underlying interconnection agreement “shall remain in full force and effect.” *Id.* The UNE-E Amendment does not modify the billing provisions of the underlying agreement, which require Qwest to accurately bill Eschelon for charges that Eschelon incurs as a result of purchasing products and services from Qwest. Exhibit B-1 at ¶12. The parties have not entered into a subsequent amendment that modifies the billing provisions of the underlying agreement, which require Qwest to accurately bill Eschelon for charges that Eschelon incurs as a result of purchasing products and services from Qwest. Therefore, Qwest’s past and on-going UNE-E billing inaccuracies are justly addressed through the payment of DMOQ credits to Eschelon.

**C. ESCHELON HAS ATTEMPTED TO RESOLVE THESE ISSUES BEFORE BRINGING THIS MATTER TO THE COMMISSION.**

1. As has been demonstrated above, Eschelon has initiated numerous contacts with Qwest in an attempt to address the issues raised in this Complaint.

2. In a February 10, 2003, letter from Eschelon President Richard Smith to Patricia A. Engels, Executive Vice President of Wholesale Markets for Qwest, Eschelon reiterated its requests for the collocation refund and DMOQ credits. Exhibit A-6. Qwest denied Eschelon’s requests on April 1, 2003. Exhibit A-7.

**QWEST’S CONTINUING VIOLATIONS OF LAW**

Qwest’s refusal to refund collocation overcharges and DMOQ credits causes significant harm to Eschelon and its customers and injures the development of a competitive marketplace for telecommunication services in Minnesota. Qwest benefits by charging and retaining higher rates than it is

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<sup>51</sup> Bills for months prior to March 2002 contained this same error. However, Eschelon had entered into an agreement with Qwest to forego DMOQ sums due for those months.

entitled to. Qwest also benefits to the extent that the marketing efforts of Eschelon are impeded due to Qwest unreasonably withholding these refunds and credits from Eschelon.

Qwest's actions with regard to Eschelon, as detailed above, constitute continuing breaches of the Interconnection Agreement approved by this Commission and continuing violations of state and federal law.

As demonstrated above, Qwest has breached its Interconnection Agreement with Eschelon and state and federal law. Qwest's continuing breaches of the Interconnection Agreement violates Minn. Stat. § 237.121(a)(4) which prohibits Qwest from refusing to provide a service, product, or facility in accordance with its contracts and the MPUC's rules and orders. Qwest's breaches of the Interconnection Agreement violate federal law, which requires Qwest to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of its Interconnection Agreement. 47 U.S.C. §§ 251(c)(2)(C), (D).

Notwithstanding the conduct of Qwest described above, Eschelon has fully and in good faith performed all of its duties and obligations under the Interconnection Agreement, the Act and applicable state law.

#### **REQUEST FOR EXPEDITED HEARING**

1. The Interconnection Agreement between Qwest and Eschelon recognizes the Commission's continuing jurisdiction to implement and enforce all of the terms and conditions of the Agreement. Exhibit A-1 at 14, ¶11.1. Further, the Agreement provides that any dispute arising out of or relating to the Agreement that the Parties themselves cannot resolve, may be submitted to the Commission for resolution. *Id.* The Agreement further provides that the Parties agree to seek expedited resolution by the Commission of any such dispute and shall request that resolution occur in no event later than 60 days from the date of submission of the dispute to the Commission. *Id.*

2. The Interconnection Agreement provisions in this regard are consistent with Minn. Stat. § 237.462, Subd. 6. That statute provides that the Commission may order an expedited proceeding if the Commission finds it to be in the public interest. In making this determination, the Commission may consider "any evidence of impairment of the provision of telecommunication service subscribers in the state or impairment of the provision of any service or network element." *Id.*

3. Both under the terms of the Interconnection Agreement and Minnesota Statutes, the Commission should grant an expedited proceeding in this matter. The problems detailed in this Complaint continue without abatement, with significant harm to Eschelon. In particular, the DMOQs should act as an incentive to Qwest to provide accurate bills as required by the Parties' Interconnection Agreement. But, if Qwest can provide inaccurate bills with no consequence under the DMOQs, it is unlikely to fix this billing problem or future billing problems. Meanwhile, Eschelon continues to receive inaccurate bills that require significant resources to reconcile each month and always remain an estimate of what is actually due.

#### **RELIEF REQUESTED**

WHEREFORE, Eschelon respectfully requests that the Commission:

1. Investigate the issues raised in this Complaint pursuant to Minn. Stat. § 237.081, Subd. 1;
2. Resolve this matter within 60 days in an expedited proceeding, pursuant to the terms of the Interconnection Agreement and Minn. Stat. § 237.462, Subd. 6;
3. Declare that the actions of Qwest detailed above constitute repeated and continuing violations of its Interconnection Agreement with Eschelon;
4. Order Qwest to immediately refund to Eschelon the overcharges for collocation non-recurring 40 amp feeds and space preparation fees, with interest;
5. Order that Qwest include in its DMOQ credit calculation for billing accuracy beginning in March 2002, and going forward, all UNE-E bills inaccurately billed at resale rates, as required by the Parties' Stipulation and Interconnection Agreement;
6. Order Qwest to immediately credit to Eschelon all amounts due for DMOQ credits for the months of March 2002 through the present, with interest;
7. Grant Eschelon any and all relief to which it is entitled under the Interconnection Agreement for Qwest's breaches of contract;
8. Assess administrative penalties against Qwest for its repeated and continuing violations of state and federal law and the Interconnection Agreement, as authorized by Minn. Stat. § 237.462, Subd. 1; and
9. Grant Eschelon such other and further relief as the Commission deems appropriate.

Dated: May 2, 2003

Respectfully submitted,

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**Attorneys for Eschelon Telecom, Inc.**





5. On January 24, 2000, Qwest and Eschelon entered into the Second Amendment to their Interconnection Agreement. Attached as Exhibit A-3 is a true and correct copy of the Amendment. The Amendment was filed with the Commission on January 27, 2000.
6. In 1999 and 2000, Eschelon completed 15 collocation build-outs, for which Qwest billed (and Eschelon paid) approximately \$397,557 in non-recurring charges for 40 amp power delivery. Attached as Exhibit A-4 is a true and correct copy of my letter to Jean Novak, dated January 31, 2003, detailing these charges. Qwest's charges were not based on Commission approved rates.
7. Qwest should have used the CCM to establish non-recurring charges for 40 amp power delivery. Had Qwest done so, Eschelon would have been billed approximately \$11,718 in non-recurring charges for 40 amp power delivery to its 15 collocation build-outs. Therefore, Eschelon is entitled to a refund from Qwest in the amount of \$385,839, plus interest.
8. Four of Eschelon's fifteen collocation build-outs were cageless, for which Qwest billed (and Eschelon paid) approximately \$41,804 in space preparation fees. Attached as Exhibit A-5 is a true and correct copy of my spreadsheet detailing these charges. Had Qwest's charges been based on Commission approved rates, Eschelon would have been billed approximately \$1,684. Therefore, Eschelon is entitled to a refund from Qwest in the amount of \$40,120, plus interest.
9. Eschelon detailed its refund request of non-recurring collocation overcharges for 40 amp feeds in a letter to Qwest, dated January 31, 2003. Attached as Exhibit A-4. On February 10, 2003, Eschelon reiterated this request to Patricia A. Engels, Executive Vice President of Wholesale Markets for Qwest. Attached as Exhibit A-6 is a true and correct copy of that letter. Qwest denied the request in a letter from Ms. Engels, dated April 1, 2003. Attached as Exhibit A-7 is a true and correct copy of that letter.
10. In a phone conversation between Eschelon and Qwest on April 4, 2003, Eschelon discussed Qwest's overcharges for cageless collocation space preparation fees, as had been ordered for by the MPUC for Onvoy. To date, Qwest has not responded to or acted on these overcharges.
11. Attached as Exhibit A-8 is a true and correct copy of the "Confidential Second Amendment to Confidential/Trade Secret Stipulation" between Qwest and Eschelon, which is now a public document.

12. Attached as Exhibit A-9 is a true and correct copy of relevant portions of the ALJ's Report in the Onvoy case, MPUC Docket No. P-421/C-01-1896.
13. The Interconnection Agreement sets forth certain Direct Measures of Quality (DMOQs) for Qwest service, together with credits or other remedies if Qwest fails to meet those DMOQs. These remedies call for, among other things, Overall Performance Index credits to Eschelon as set forth in Attachment 11, Appendix B of the Agreement. Attached as Exhibit B-1 is a true and correct copy of relevant portions of the Agreement.
14. Qwest and Eschelon also entered into a Stipulation and Agreement (Stipulation) on or about February 29, 2000. Attached as Exhibit B-2 is a true and correct copy the Stipulation. The Commission accepted the Stipulation and Agreement in an Order, dated June 28, 2000. The Stipulation, among other things, amended the DMOQ provisions of the Parties' Interconnection Agreement.
15. Eschelon submitted claims to Qwest for DMOQ credits for the months of March through June, 2002. Attached as Exhibit B-3 is a true and correct copy of my letter (including attachments) to Jean Novak, dated March 13, 2003, detailing Eschelon's DMOQ credit requests from March 2002 through December 2002. Qwest disputed each of these claims and refused to provide the credits claimed by Eschelon.
16. Attached as Exhibit B-4 is a true and correct copy of Qwest's and Eschelon's exchange of correspondence concerning DMOQ credits.
17. Qwest agreed to provide Eschelon with \$52,702 in undisputed DMOQ credits, but refused to include DMOQ credits related to UNE-Eschelon ("UNE-E") billing errors. Attached as Exhibit B-5 is a true and correct copy of Qwest's March 28, 2003 letter (including attachments) detailing the DMOQ credits provided. The amount of DMOQ credits withheld by Qwest from March 2002 through December 2002 totals approximately \$105,048.
18. The primary dispute between Eschelon and Qwest regarding DMOQ credits concerns metric B-4, "Billing Accuracy-Adjustments for Errors". Under this metric the parties have agreed to divide the total revenue billed without error by the total billed revenue billed in the reporting period (month). Qwest has refused to provide DMOQ credits for UNE-E billing inaccuracies.
19. UNE-E is a product Qwest provides to Eschelon pursuant to the Eighth Amendment to the Parties' Interconnection Agreement (Amendment) entered into on or about December 4, 2000. Attached as Exhibit B-6 is a

true and correct copy of this Amendment. The Commission approved this Amendment in an Order, dated January 26, 2001. Pursuant to this Amendment, Qwest agreed to provide Eschelon with a platform product that Qwest initially referred to as UNE-Eschelon or UNE-E (and Qwest now refers to as UNE-Star). Eschelon purchased UNE-E as a substitute for UNE-Platform ("UNE-P"), Qwest's official platform product.

20. When Eschelon initially attempted to order UNE-P from Qwest in Minnesota, the product had numerous problems. When Eschelon placed trial orders, the orders resulted in denial and loss of features, unclear and changing processes and customer-affecting service problems. The problems were so severe that Eschelon could not utilize the product. In response to these problems, Qwest offered Eschelon a different product it called UNE-E.
21. Qwest agreed to convert Eschelon's resale base to UNE-E but indicated it could not complete the conversion for a few months. In the short-term, Qwest told Eschelon to order UNE-E through the existing resale process. Under this temporary process, Qwest stated it would continue to bill Eschelon the resale rate and then compare the end-of-month billed revenues to the UNE-E rates and pay Eschelon the difference. Qwest continues to use this temporary process today – over two years after the UNE-E Amendment date – despite Qwest's promises to develop a billing system to accurately bill Eschelon for UNE-E lines.
22. Qwest's continued billing for UNE-E at the incorrect resale rate has resulted in Eschelon receiving inaccurate UNE-E bills each month and being required to expend a large amount of resources attempting to reconcile the bills with what should have been billed by Qwest. For each month in question, March 2002 through December 2002, Qwest has presented Eschelon with UNE-E bills that do not reflect any of the UNE-E rates in the UNE-E Interconnection Agreement Amendment. Instead, the bills show rates that reflect the retail rate minus the wholesale discount. A UNE-E credit must then be determined by applying the UNE-E rates to the UNE-E product quantities Eschelon has ordered. Because the bills from Qwest reflect resale rates, rather than UNE-E rates, literally 100% of Qwest's UNE-E bills to Eschelon were inaccurate in 2002.

FURTHER AFFIANT SAYETH NOT.

Dated: May 2, 2003.

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William D. Markert

Subscribed and sworn to before me

this \_\_\_\_\_ day of May 2003.

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Notary Public

**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**  
**100 Washington Square Suite 1700**  
**100 Washington Avenue South**  
**Minneapolis, MN 55401-2138**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION**  
**121 Seventh Place East, Suite 350**  
**St. Paul, MN 55101-2147**

**LeRoy Koppendrayer**  
**R. Marshall Johnson**  
**Gregory Scott**  
**Phyllis Reha**

**Chair**  
**Commissioner**  
**Commissioner**  
**Commissioner**

In the Matter of the Complaint of  
Eschelon Telecom of Minnesota, Inc.  
Against Qwest Corporation.

OAH Docket No. 15-2500-15426-2  
MPUC Docket No. P-421/C-03-627

**DEPARTMENT OF COMMERCE RESPONSE TO QWEST  
CORPORATION'S MOTION FOR SUMMARY JUDGMENT  
REGARDING ESCHELON'S OPT-IN CLAIM AND RESPONSE TO  
ESCHELON'S INITIAL BRIEF**

**I. INTRODUCTION**

On April 23, 2003, Eschelon Telecom of Minnesota, Inc. (Eschelon) filed a formal Complaint claiming that Eschelon is entitled to the same rate from Qwest for a service known as UNE-Star<sup>52</sup> as that paid by one of its competitors, McLeodUSA (McLeod); that Eschelon is entitled to receive nondiscriminatory rates from Qwest.

Qwest maintains that it never refused to amend Eschelon's pricing, but that in order for Eschelon to obtain McLeod's pricing, Eschelon must agree to the same terms and conditions as McLeod, including the volume commitments and the termination date.

Qwest asserts that what Eschelon proposes is not an "opt-in" but rather a negotiation and that Eschelon does not have a right to opt-in to McLeod's pricing without addressing the other differences between the Eschelon and McLeod Interconnection Agreement (ICA), while Eschelon argues that it is

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<sup>52</sup> The service at issue is known as UNE-E when applied to Eschelon, UNE-M when applied to McLeod or generically as UNE-Star. UNE-Star is the general term also used by the Department to refer to both UNE-M and UNE-E.

entitled to the same price for UNE-Star as McLeod and it need not make other changes to its Agreement to obtain that rate, because any differences in the two agreements are not legitimately related to the rate.

Qwest expressed a willingness to negotiate an amendment to address Eschelon's pricing request and provided a Qwest contact for engaging in such negotiations, but Eschelon has been unwilling to negotiate to obtain the McLeodUSA pricing, maintaining that it was entitled to the pricing despite the other terms of the agreement.<sup>53</sup> Qwest maintains that it never refused to amend Eschelon's pricing, but has made it clear that it is unwilling to give Eschelon McLeod's pricing unless Eschelon agree to make other changes to its UNE-Star agreement.<sup>54</sup>

Qwest challenges the jurisdiction of the Commission to address any of the issues raised by Eschelon in this Complaint and further asserts that the Commission is without any authority to award damages to Eschelon in this case.

As discussed in further detail below, the Department recommends that the ALJ find that:

1. The Commission has jurisdiction to resolve Eschelon's Complaint.
2. Qwest was required to provide Eschelon with the reduced pricing on the UNE-Star product, and that Eschelon was not required to negotiate an amendment to its ICA.
3. Eschelon is entitled to the reduced rate for the remainder of the term of the McLeod Amendment or for so long as McLeod benefits from that rate, whichever is longer.
4. The Commission has authority to issue an order to correct Qwest's discriminatory treatment of Eschelon, including retroactive monetary relief.

## II. STATEMENT OF FACTS

The material facts are not in dispute.<sup>55</sup>

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<sup>53</sup> Eschelon Complaint, Ex. B-6, at 7; Eschelon Complaint, Ex. B-5, at 5.

<sup>54</sup> See Ex. 3 to Eschelon's Initial Brief (November 8, 2002 letter to Eschelon from Qwest stating that to obtain McLeod's UNE-Star rate Eschelon must agree to the same terms and conditions as McLeod, including the volume commitments and the termination date).

<sup>55</sup> Qwest has filed a Motion for Summary Judgment and asked for treatment pursuant to OAH Rule 1400.5500(K), which provides that the Office of Administrative Hearings is empowered to "recommend a summary disposition in a case or any part thereof where there is no dispute as to any issue of fact . . ." Eschelon in its Initial Brief also argues that it is entitled to relief based on the undisputed facts in the record. Because the facts material to this issue are for the most part not in dispute, summary disposition would be appropriate.

1. Eschelon and Qwest entered into an Interconnection Agreement (Agreement or Interconnection Agreement or ICA) that was approved by the Commission on October 4, 1999. (Docket No. P-5340, 421/M-99-1223). *See* Exhibit A to Complaint. That Agreement was premised on the original arbitrated AT&T/US WEST Agreement.

2. On October 1, 2000, Qwest and McLeodUSA entered into the Eighth Amendment to their Interconnection Agreement. Exhibit A-2 to Complaint. That Amendment was not filed with the Commission, and thus not made public until December 20, 2000. It was approved by the Commission in Docket P5323,421/IC-00-1707, on January 26, 2001. That Amendment provided for UNE-M or UNE-Star at the recurring rates listed in Attachment 3.2 to that Amendment. The Platform recurring rate for Minnesota was \$27.00

3. On November 15, 2000, Qwest and Eschelon entered into the Eighth Amendment to their Interconnection Agreement (UNE-Star Amendment). Exhibit A-3 to Complaint. The Amendment was approved by the Commission on January 26, 2001 in Docket No. P5340,421/IC-00-1657. This Amendment provided for the purchase of UNE-Star at the rates provided in Attachment 3.2 of that Amendment. The Platform Recurring rate for Minnesota was \$27.00.

4. The rates were the same as the rates in the McLeodUSA UNE-Star Amendment even though the termination dates and the volumes differed greatly between the two agreements. Pursuant to the terms of the McLeod USA Amendment, McLeodUSA pricing expires on December 31, 2003.<sup>56</sup> Eschelon requests that it receive pricing until December 31, 2005, the expiration date of its agreement with Qwest.<sup>57</sup>

5. On or about September of 2002, McLeodUSA and Qwest entered into an Amendment of their Interconnection Agreement. This document amended the pricing of UNE-Star for McLeodUSA.<sup>58</sup> The Amendment provided for a reduction of UNE-Star rates in Minnesota from \$27.00 per month to \$24.50 per month for McLeod. That Amendment was approved by Commission Order dated February 7, 2003, in Docket No. P-5323,421/IC-02-1566.

6. Immediately after learning of this amendment, Eschelon asked Qwest to give it the same UNE-Star rates as those made available to McLeodUSA. In making its request, Eschelon requested the

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<sup>56</sup> *See* Complaint, Ex. A-5 at 2

<sup>57</sup> *See* Complaint, Ex. A-3, at 1

<sup>58</sup> *See* Complaint, Ex. A-5.

price contained in the agreement without any corresponding provisions.<sup>59</sup> Qwest has repeatedly refused to do so unless Eschelon agrees to the other terms and conditions of the Qwest/McLeodUSA Amendment.<sup>60</sup>

7. Qwest expressed a willingness to negotiate an amendment to address Eschelon's pricing request and provided a Qwest contact for engaging in such negotiations.<sup>61</sup> Eschelon was unwilling to negotiate to obtain the McLeodUSA pricing, absent an agreement by Qwest to waive other terms of the agreement, including the expiration of the pricing agreement and the volume commitments contained in the agreement.<sup>62</sup>

### III. ARGUMENT

#### A. Jurisdiction

Qwest maintains that the Minnesota Public Utilities Commission lacks jurisdiction to hear this dispute--that "Eschelon has not sought to opt-into the McLeod agreement without modifying its terms" and thus neither the Act nor the FCC's rules provide the Minnesota Commission with jurisdiction.<sup>63</sup> The Department agrees with Eschelon that this claim necessarily fails. The very issue for the Commission to decide is what additional terms, if any, are legitimately related to the rate paid by McLeod. The FCC has made it clear that it is the state commissions that should examine the issue in the first instance. *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report and Order), ¶1321. There, the FCC stated in relevant part:

Since agreements shall necessarily be filed with the states pursuant to section 252(h), we leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis.<sup>64</sup>

Moreover, the Commission has express authority to enforce the ICA, which includes whether Qwest has violated Eschelon's right to its so-called "most favored nation" provision. Under Eschelon's Interconnection Agreement, Qwest must provide network elements to Eschelon on rates, terms and

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<sup>59</sup> See Eschelon Complaint, Ex. B-5, at 5

<sup>60</sup> See Corbetta Letter, Ex. 3 to Eschelon's Initial Brief; Engels Letter, Ex. B-6 to Complaint.

<sup>61</sup> See Eschelon Complaint, Ex. B-6 at 7

<sup>62</sup> See Eschelon Complaint, ¶ 9

<sup>63</sup> See Qwest Answer at 11.

<sup>64</sup> *Id.* at ¶ 1321



conditions no less favorable than those provided to itself or any other party.<sup>65</sup> The Commission clearly has jurisdiction to address an alleged breach of an ICA.<sup>66</sup>

In either event, the Commission has explicit jurisdiction over the issues presented in these proceedings.

**B. Eschelon is Entitled to the Same Reduction in Price as McLeod Received for UNE-Star.**

Eschelon is entitled to the same price reduction for UNE-Star as that provided to McLeodUSA. Pursuant to Section 251 of the Act, interconnection and unbundled element rates provided by an ILEC must be nondiscriminatory. The Act provides methods for CLECs to take advantage of their right to nondiscriminatory rates. One avenue is to allow CLECs to "pick and choose" provisions from the interconnection agreements of other CLECs as provided in Section 252(i) of the Act. The FCC made it clear that the Act's nondiscrimination provisions apply to an ILEC's attempts to restrict availability of provisions under section 252(i). First Report and Order, ¶ 1315.

Section 252(i) of the Act states:

"a local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement."<sup>67</sup>

The FCC promulgated a rule to implement 252 (i)--47 CFR § 51.809 (1997).<sup>68</sup> In its Order implementing its rule, the FCC has stated that section 252(i) is "a primary tool of the 1996 Act for preventing discrimination under section 251."<sup>69</sup> Rule 51.809 provides, in relevant part:

"An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that

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<sup>65</sup> See Part A, Part III, Sec. 37, pp. 28-29 of the Eschelon Interconnection Agreement, attached as Ex. 2 to Eschelon's Initial Brief.

<sup>66</sup> See *In the Matter of Core Communications, Inc. v. Verizon Maryland, Inc.*, 2003 WL 1917249, FCC 03-96, rel.: April 23, 2003 ¶ 29 and note 85 (the great weight of court and Commission authorities hold that state commissions have authority to enforce interconnection agreements) (citations omitted.); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) (holding that the Telecommunications Act provides that an interconnection agreement must be submitted to the state commission for approval. This grant of power to state commissions necessarily includes the power to enforce the interconnection agreement).

<sup>67</sup> 47 USC 252(i).

<sup>68</sup> The rule is attached to Eschelon's Initial Brief as Ex. 5.

<sup>69</sup> See First Report & Order at ¶ 1296.

is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement."

The rule further provides that the ILEC (Qwest) is required to allow the CLEC (Eschelon) to pick and choose unless and until "the incumbent proves to the state commission" that either the costs of providing the service to the requesting carrier (Eschelon) are greater than the costs of providing it to the original carrier (McLeod), or it is not technically feasible to provide the service to the requesting carrier.<sup>70</sup> The burden is clearly on Qwest to prove that "pick and choose" is not required here because of cost or technical infeasibility.<sup>71</sup>

The FCC concluded that Section 252(i) itself acts as a most favored nation clause, whether or not included in the parties' interconnection agreement,<sup>72</sup> as a method to ensure nondiscriminatory rates. The FCC stated:

We further conclude that section 252(i) entitles all parties with interconnection agreements to "most favored nation" status regardless of whether they include "most favored nation" clauses in their agreements. Congress's command under section 252(i) was that parties may utilize any individual interconnection, service, or element in publicly filed interconnection agreements and incorporate it into the terms of their interconnection agreement. This means that any requesting carrier may avail itself of more advantageous terms and conditions subsequently negotiated by any other carrier for the same individual interconnection, service, or element once the subsequent agreement is filed with, and approved by, the state commission. We believe the approach we adopt will maximize competition by ensuring that carriers' obtain access to terms and elements on a nondiscriminatory basis.<sup>73</sup>

While Qwest has suggested that the costs of providing UNE-Star differ between Eschelon and McLeod because of differing terms such as volume, Qwest has simply failed to meet its burden of proof that its cost to provide the UNE to Eschelon is significantly greater than its cost to provide it to McLeod.

The fact that Eschelon and McLeod entered into UNE-Star agreements within 45 days of each other in 2000 is undisputed. The agreements were virtually identical with the exception of two major items-term and volume: the initial term of the McLeod agreement expired on December 31, 2003, whereas the initial term of the Eschelon Agreement expired on December 31, 2005; McLeod committed to purchase at least 275,000 local exchange lines per year, but Eschelon only committed to purchase at least 50,000

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<sup>70</sup> 47 CFR § 51.809(b)

<sup>71</sup> Technical infeasibility has not been raised by Qwest as it is already providing UNE-Star to Eschelon.

<sup>72</sup> Under Eschelon's ICA, Qwest must provide network elements to Eschelon on rates, terms and conditions no less favorable than those provided to itself or any other party. *See* Part A, Part III, Sec. 37, pp. 28-29 of the Eschelon Interconnection Agreement, attached as Ex. 2 to Eschelon's Initial Brief.

access lines per year. Both agreements contain Attachment 3.2, which set out identical rates for the two companies despite the differences of term and volume.

In September of 2002, McLeod and Qwest entered into a new amendment of their UNE-Star Agreement, reducing the pricing of UNE-Star to McLeod by about 9%, without changing any other terms. The McLeod UNE-Star agreement termination date and volume commitments did not change, nor did any other term in the McLeod agreement.

On this record, Qwest has failed to establish that the cost of providing the service would increase as a result of providing this discount to Eschelon. As such, Eschelon is entitled to the price reduction.

**C. Eschelon Should Be Allowed To Adopt Price Reduction For Same Term As McLeod**

The Department agrees with Qwest, however, that Eschelon should be bound by the term of the price reduction. It is undisputed that the specified term of the McLeod ICA--and pricing discount--is *shorter* than Eschelon's contract term.<sup>74</sup> Again, section 252(i) of the Act provides that:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those *provided* in the agreement (emphasis added).

The FCC provided some, but not complete guidance in its Rules:

Individual interconnection, service, or network element arrangements shall remain available for use by telecommunications carriers pursuant to this section *for a reasonable period of time* after the approved agreement is available for public inspection under § 252(f) of the Act (emphasis added).<sup>75</sup>

While the Commission has never formally ruled on the exact issue presented in this case, it recently touched on this issue albeit in the context of the adoptability of an agreement that had gone past its expiration date, but where the network elements were still being provided under the agreement--the so-

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<sup>73</sup> See First Report & Order at ¶ 1316.

<sup>74</sup> An interesting issue is raised if the terms of the basic ICA terminate/expire before these amendments. For example, counsel for Eschelon stated in an earlier proceeding dealing with rates, "The other thing that all parties to this negotiation knew was that our agreement was set to expire soon, our underlying agreement, and in fact it has expired now and is in Evergreen status. And that meant even though we negotiated those rates and were entitled to those rates, we knew and Qwest knew that they could change once the agreement expired." See transcript of proceedings, *In the Matter of the Complaint of Eschelon Telecom of Minnesota, Inc., Against Qwest Corporation*, MPUC Docket No. P-421/C-02-550 (August 29, 2002) at 8. Similarly in this case, both Qwest and McLeod would have known that the UNESstar amendment, if not the entire underlying ICA, would soon expire.

<sup>75</sup> See FCC Rule § 51.809(c); see also, First Report and Order at ¶ 1319.

called “evergreen” status.<sup>76</sup> There, after seeking comment from the industry, the Commission adopted a Policy Statement which provided:

- (i) The upper limit of the adoption window is the termination date stated in an ICA for those ICAs where the ILEC is no longer providing interconnection, elements, or services to any CLEC or CMRS provider under the terms of the ICA in question.
- (ii) The adoption window remains open for an ICA after the termination date stated therein to the extent that the ILEC continues to provide interconnection, elements, or services to any CLEC or CMRS provider under the ICA in question. Any adopting CLEC or CMRS provider would be subject to the same termination provisions as negotiated by the original negotiating carrier.
- (iii) Notwithstanding (i) and (ii), the availability of an ICA for adoption shall be bounded by a showing by the ILEC that, pursuant to § 51.809(b), (a) it is not technically feasible to provide service to the requesting carrier, or (b) the costs of providing service to the requesting carrier are higher than the costs of providing service to the original negotiating carrier.
- (iv) To the extent that there is a debate as to interpretation of “provided” in § 252(i) the parties may approach the Commission for resolution.<sup>77</sup>

The Commission fully recognized that its policy did not have the force and effect of law and only provided a starting point for deliberations.<sup>78</sup> However, the Department sees no compelling basis in this record to deviate from that policy.

Therefore, Eschelon should receive the benefit of the reduced pricing from the time of their initial request until at least until December 31, 2003, (the expiration date of McLeod Amendment), at which time Eschelon would revert to the original pricing for the remaining two years (to December 31, 2005) of Eschelon’s amendment). To the extent that this amendment will survive expiration of the underlying ICA or will itself go into an “evergreen” type status or where McLeod continues to reap the benefit of these lower UNE rates, Eschelon should continue to benefit as well.

**D. Other ICA Differences Cited By Qwest.**

Qwest has identified four other ways in which the two contracts differ: (1) Termination dates; (2) CCMS (Custom Call Management System); (3) A \$0.35 monthly recurring rate for AIN features;

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<sup>76</sup> See *In the Matter of the Inquiry Regarding the Adoptability of interconnection Agreements Pursuant to Section 252(i) of the Telecommunications Act of 1996*, MPUC Docket No. P-999/CI-02-116 (May 16, 2002) (attached as Ex. 1).

<sup>77</sup> *Id.* at 2.

<sup>78</sup> See *Id.* at 1.

(4) Eschelon has non-recurring charges for UNE-Star, added as part of the above-referenced CCMS amendment, which McLeod does not.<sup>79</sup>

Without repeating all of Eschelon's arguments here, the Department agrees with Eschelon that none of those differences are legitimately related to the rate for UNE-Star; they are additional terms applicable to Eschelon, rather than related terms of the McLeod agreement that Eschelon seeks to avoid.<sup>80</sup> As Eschelon points out, it is seeking to opt-in to the McLeod rates for UNE-Star, not the other way around. Therefore, the relevant question is not what terms Eschelon has in its agreement, but rather what terms McLeod has in its agreement. Qwest should not be allowed to use the additional, unrelated terms in the Eschelon agreement to prevent Eschelon from opting in to the McLeod UNE-Star pricing.

Because Qwest has failed to establish that any of these four differences are legitimately related to the price that McLeod pays for UNE-Star, the ALJ should recommend that the Commission require Qwest to provide Eschelon with the McLeod UNE-Star pricing.

**E. The Commission Has The Authority To Correct The Harm Caused By Qwest's Conduct.**

The Commission has the authority to award damages for Qwest's refusal to allow adoption of the lower UNE rates both by state statute and because of express authority granted by the ICA herein.

**1. The Commission has authority to issue an order to correct the discrimination caused by Qwest's refusal to allow adoption of the reduced UNE rates.**

As a creature of statute, the Commission enjoys only the authority granted to it by the legislature. *See Frost-Benco Elec. Ass'n v. Public Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984); *Great Northern Ry. v. Public Serv. Comm'n*, 284 Minn. 217, 220-21, 169 N.W.2d 732, 735 (1969). That authority may be either express or implied. "While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature." *Peoples Natural Gas Co. v. Public Utils. Comm'n*, 369 N.W.2d 530, 534-36 (Minn. 1985). In *Peoples Natural Gas*, the Minnesota Supreme court held that the Commission lacked express or implied authority to enforce its own orders by ordering a customer refund, noting that other enforcement tools were available in the statutes. The Court based its

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<sup>79</sup> See Response to Esch 016, attached to Eschelon's Initial Brief as Ex. 6.

<sup>80</sup> See Eschelon Initial Brief at 7-10.

conclusion on Minn. Stat. § 216.27 , the controlling statute at that time for gas company rates, which specifically provided only for prospective relief.

Minn. Stat. § 237.081, subd. 4 provides that if the Commission finds that “any rate, toll, tariff, charge, or schedule, or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of telephone service or any service in connection with telephone service, is in any respect unreasonable, insufficient, or unjustly discriminatory,” the Commission “shall make an order respecting the tariff, regulation, act, omission, practice, or service that is just and reasonable and, if applicable, shall establish just and reasonable rates and prices.”

This statute not only authorizes the Commission to award prospective relief “if applicable,” the statute clearly allows the Commission to “make an order respecting the \* \* \* practice, or service that is just and reasonable \* \* \*.” This language does not state or imply that the Commission’s authority to award damages or other remunerative relief for a past episode is limited. Had the legislature intended to limit the Commission as suggested by Qwest, it could and would have said so in more explicit terms. The legislature obviously recognized the need to give the Commission broad authority to address the broad type of harm that could be caused by improper company practices.<sup>81</sup>

In an unpublished decision of the Minnesota Court of Appeals, *In the Matter of the Formal Complaint of the Members of the MIPA Against US West Communications, Inc.*, No. CO-97-606 (Dec. 30, 1997) (unpublished opinion) (copy attached pursuant to Minn. Stat. § 480A.08(3) as Ex. 2), the Court reviewed Minn. Stat. §§ 237.081 and .461, as well as the decision in *Peoples Natural Gas*, and held that the Commission had authority to establish just and reasonable rates and order appropriate action, including retroactive refunds. *See Id.* at 3.

In the present case, because Eschelon established that Qwest improperly provided McLeod more favorable and discriminatory pricing than Eschelon, the Commission has the authority to order a retroactive refund.

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<sup>81</sup> See also *In the Matter of the Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Order After Reconsideration on Own Motion, Docket No. P-421/C-02-197 (April 30, 2003) (Holding that the Commission has statutory authority to order monetary payments to correct discriminatory conduct).

## **2. The ICA provides the Commission with authority to award monetary damages.**

Even if the Commission somehow lacks state statutory authority to award damages in this case, the Commission has express authority to enforce the ICA, which includes whether Qwest has violated Eschelon's right to its so-called "most favored nation" provision. The underlying ICA specifies that damages and equitable relief are remedies available under the ICA,<sup>82</sup> and the fact that the parties specifically agreed in the ICA that the Commission has jurisdiction and the authority to enforce the ICA.<sup>83</sup> The assertion further disregards FCC and federal court decisions in which the state commissions have been held to have continuing authority to enforce ICAs.<sup>84</sup>

Specifically, Section 11.1 of the ICA constitutes an agreement by the parties that the Commission has jurisdiction to enforce the ICA and states, in part, "The Parties...agree that the Commission has continuing jurisdiction to implement and enforce all term and conditions of this Agreement..." The ICA further specifies that damages and equitable relief are remedies available under the ICA.<sup>85</sup> The parties specifically agreed in the ICA that the Commission has jurisdiction and the authority to enforce the ICA.<sup>86</sup> Again, the FCC and federal courts have held that the state commissions have continuing authority to

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<sup>82</sup> See ICA § 10.4 (attached as Ex. 3 at 3). The ICA, at sections 8.4, 10.1, 10.2 and 10.4 preserve all remedies available to the parties at law and equity, including injunctive relief, specific performance, equitable remedies, and remedies available at law or by administrative process (copies of these sections are attached as Ex. 2).

<sup>83</sup> See § 11.1. (The ICA specifies that "[t]he Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement...may be submitted to the Commission for resolution.")

<sup>84</sup> See *MCI Telecommunications Corp. v. BellSouth Telecommunications, Inc.*, 298 F.3d 1269, 1274, (11th Cir. 2003) (holding that enforcement of ICA provisions, including compensation provisions and liquidated damages provision clearly contemplated by the Telecommunications Act and within the authority of state commissions); *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) (The Telecommunications Act provides that an interconnection agreement must be submitted to the state commission for approval. This grant of power to state commissions necessarily includes the power to enforce the interconnection agreement); *In the Matter of Core Communications, Inc. v. Verizon Maryland, Inc.*, 2003 WL 1917249, FCC 03-96, rel.: April 23, 2003 ¶ 29 and note 85 (the great weight of court and Commission authorities hold that state commissions have authority to enforce interconnection agreements) (citations omitted.)

<sup>85</sup> See ICA § 10.4 (Ex. 3 at 3). The ICA, at sections 8.4, 10.1, 10.2 and 10.4 preserve all remedies available to the parties at law and equity, including injunctive relief, specific performance, equitable remedies, and remedies available at law or by administrative process.

<sup>86</sup> See § 11.1 (Ex. 3 at 3-4). (The ICA specifies that "[t]he Parties recognize and agree that the Commission has continuing jurisdiction to implement and enforce all terms and conditions of this Agreement. Accordingly, the Parties agree that any dispute arising out of or relating to this Agreement...may be submitted to the Commission for resolution.")

enforce ICAs.<sup>87</sup> Qwest has failed to establish that the Commission lacks authority to enforce the other provisions of the ICA that set forth the remedies for breach to which the parties agreed.

Such an outcome is consistent with established legal precedent holding that state commissions may enforce ICA provisions, including provisions on compensation and damages.<sup>88</sup>

#### IV. CONCLUSION

Based upon the forgoing, the ALJ should recommend that the Commission find that Eschelon was entitled to the same rate as McLeod for UNE-Star and the Commission should order Qwest to change that rate for Eschelon. The lower prices should be deemed effective as of the date that Eschelon first requested to adopt that rate, and for the remainder of the term of the McLeod Amendment or for so long as McLeod continues to benefit from that rate, whichever is longer. The ALJ should further recommend that the Commission order retroactive monetary relief to Eschelon to correct Qwest's improper and discriminatory conduct.

Dated: \_\_\_\_\_

Respectfully submitted,

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**ATTORNEY FOR MINNESOTA  
DEPARTMENT OF COMMERCE**

AG: #896700-v1

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<sup>87</sup> *Southwestern Bell Tel. Co. v. Connect Communications Corp.*, 225 F.3d 942, 946 (8th Cir. 2000) (The Telecommunications Act provides that an interconnection agreement must be submitted to the state commission for approval. This grant of power to state commissions necessarily includes the power to enforce the interconnection agreement); *In the Matter of Core Communications, Inc. v. Verizon Maryland, Inc.*, 2003 WL 1917249, FCC 03-96, rel.: April 23, 2003 ¶ 29 and note 85 (the great weight of court and Commission authorities hold that state commissions have authority to enforce interconnection agreements) (citations omitted.)

<sup>88</sup> *See, e.g., MCI Telecommunications Corp. v. Bellsouth Telecommunications, Inc.*, 298 F.3d 1269, 1274, (11th Cir. 2003) (enforcement of ICA provisions, including compensation provisions and liquidated damages provision clearly contemplated by the Telecommunications Act and within the authority of state commissions).



**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

**LeRoy Koppendraye  
R. Marshall Johnson  
Gregory Scott  
Phyllis Reha  
Ellen Gavin**

**Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner**

In the matter of the Complaint of Eschelon  
Telecom of Minnesota, Inc. against Qwest  
Corporation, formerly known as U S West  
Communications, Inc.

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Docket No. P \_\_\_\_\_

**COMPLAINT AGAINST QWEST  
CORPORATION, AND REQUEST  
FOR EXPEDITED PROCEEDING  
PURSUANT TO MINN. STAT. 237.462**

Eschelon Telecom of Minnesota, Inc. ("Eschelon") hereby brings this Complaint, consisting of  
two separate issues, against Qwest Corporation ("Qwest") and alleges as follows:

**INTRODUCTION AND PARTIES**

1. Eschelon files this Complaint with the Minnesota Public Utilities  
Commission ("MPUC" or "Commission") in order to obtain immediate relief from the refusal of Qwest to  
honor its contractual, statutory, and other obligations to provide interconnection at non-discriminatory rates  
as required under the Telecommunications Act of 1996 (the Act) and state law.

2. Specifically, Qwest charges Eschelon higher rates for UNE-Star than it charges to  
McLeodUSA. Qwest's refusal to make UNE-Star available to Eschelon at the same rate it is provided to  
McLeod is contrary to the Act, the parties' Interconnection Agreement (ICA) and Chapter 237 of the  
Minnesota Statutes. Furthermore, Eschelon is entitled to a refund of payments made for private lines that  
should have been available to Eschelon as combinations of unbundled network elements known as EELs.  
Qwest's failure to reprice those circuits violates the Act, Chapter 237 of the Minnesota Statutes and the  
parties' Interconnection Agreement.

3. Due to the continuous nature of Qwest's violations of law related to these practices,  
Eschelon requests that the Commission order an expedited hearing pursuant to Minn. Stat. § 237.462,  
Subd. 6. Eschelon requests such relief as may be just and reasonable and in accordance with applicable  
Minnesota and federal law, including, without limitation, the initiation of a complaint and investigation by  
the Commission pursuant to Minn. Stat. § 237.081, Subd. 1(a), the issuance of an administrative penalty

order by the Commission pursuant to Minn. Stat. § 237.462, Subds. 1 and 2, the issuance of an Order requiring Qwest to provide UNE-Star to Eschelon at non-discriminatory rates and ordering repricing of special access at EEL rates, and such other relief as the Commission deems appropriate.<sup>89</sup>

4. Eschelon is a competitive local exchange carrier (“CLEC”) providing local and interexchange telecommunications services in Qwest’s service territory in Minnesota, primarily serving small business customers. As a CLEC in competition with Qwest and other CLECs, Eschelon must establish and retain its reputation as a viable alternative to the incumbent telephone company. In order to compete, Eschelon must avail itself of rights provided under law to gain competitive access to the market.

5. Eschelon’s principal place of business is 730 Second Avenue South, Suite 1200, Minneapolis, Minnesota 55402. Eschelon is certified to provide local exchange service in Minnesota pursuant to orders of the MPUC dated July 18, 1996 and April 12, 1999.

6. Eschelon is represented in this proceeding by its attorney:

Dennis D. Ahlers  
Senior Attorney  
Eschelon Telecom, Inc.  
730 Second Avenue South, Suite 1200  
Minneapolis, MN 55402-2456  
Telephone: (612) 436-6249  
Facsimile: (612) 436-6349

7. Respondent Qwest is a Colorado corporation, with offices in Minnesota at 200 South Fifth Street, Minneapolis, Minnesota 55402. Qwest is an incumbent local exchange carrier (“ILEC”) within the meaning of Section 251(h) of the Telecommunications Act of 1996 (the “Act”), and provides local exchange, exchange access and inter-exchange services in Minnesota subject to the Commission’s regulatory authority. Qwest is the dominant monopoly provider of local exchange service in Minnesota.

8. Eschelon has served Qwest with this Complaint through:

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<sup>89</sup> Eschelon also reserves its rights to such private remedies as may be available pursuant to Minnesota law and recognized in Minn. Stat. § 237.462, Subd. 11.

Jason Topp, Senior Attorney  
Qwest Communications  
200 South Fifth Street, Suite 395  
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Telephone: (612) 672-8904  
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Qwest Communications Director  
Interconnection Compliance  
1801 California Street  
Room 2410  
Denver, Colorado 80202

### **JURISDICTION**

The MPUC has jurisdiction over this Complaint pursuant to 47 U.S.C. § 251(c)(1)(D) and (3) (authority of state commissions to enforce requirement that Qwest provide facilities and equipment "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory..."), 47 U.S.C. §252(e) (authority of state commissions to enforce interconnection agreements), 47 U.S.C. 252(I) and 47 C.F.R. 51.809 (1997), Minn. Stat. §§ 237.081, Subd. 1(a) (investigations), 237.462, and Subds. 1 and 6 (competitive enforcement).

### **FACTUAL BACKGROUND**

#### **A. ESCHELON IS ENTITLED TO THE SAME RATES AS MCLEOD FOR UNE-STAR.**

1. On or about October 4, 1999, the Commission approved an Agreement For Local Wireline Network Interconnection and Service Resale (the "Interconnection Agreement" or "Agreement") between Qwest and Exchelon. Relevant excerpts from a true and correct copy of the Interconnection Agreement are attached as Exhibit A-1.<sup>90</sup>

2. The Parties' Interconnection Agreement provides that if the Parties cannot resolve a dispute they may apply to the Commission for resolution. *Id.*, Part A, Section 11. The Agreement further provides that the Parties will seek expedited resolution by the Commission of any such dispute and shall request that resolution occur in no event later than 60 days from the date of submission of the dispute to the Commission. *Id.*

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<sup>90</sup> All Exhibits are exhibits to the Affidavit of William D. Markert appended as Attachment 1 to this Complaint.

3. On October 1, 2000, Qwest and McLeodUSA entered into the Eighth Amendment to their Interconnection Agreement. Exhibit A-2. That Amendment was filed with the Commission on December 20, 2000 in Docket P5323,421/IC-00-1707, and approved on January 26, 2001. That Amendment provided for UNE-M or UNE-Star<sup>91</sup> at the rates listed in the Addendum to that Amendment.

4. On November 15, 2000, Qwest and Eschelon entered into the Eighth Amendment to their Interconnection Agreement (UNE-Star Amendment). Exhibit A-3. The Amendment was approved by the Commission on January 26, 2001 in Docket No.P5340,421/IC-00-1657. This Amendment provided for the purchase of UNE-Star at the rates provided in Attachment 3.2 of that Amendment. The rates were the same as the rates in the McLeodUSA UNE-Star Amendment even though the termination dates and the volume commitments differed greatly.

5. On July 31, 2001, Eschelon and Qwest entered into the Twelfth Amendment to their Interconnection Agreement, which allowed Eschelon to purchase switch-based Advanced Intelligent Network (AIN) features, at retail rates, as well as other switch-based features and listing charges to be included in the UNE-Star (referred to in the Amendment as UNE-P) flat rate. Exhibit A-4. Adding additional features into the flat-rated UNE-Star charge of the right to purchase such AIN features as a part of UNE-Star, resulted in a 35-cent increase in the recurring rates for Eschelon. See Amended Attachment 3.2 in Exhibit A-4.

6. On or about September of 2002, McLeodUSA and Qwest entered into an Amendment of their Interconnection Agreement, which amended the pricing of UNE-Star for McLeodUSA. A true and correct copy of the Amendment is attached hereto as Exhibit A-5. The Amendment provided for a reduction of UNE-Star rates in Minnesota from \$27.00 per month to \$24.50 per month for McLeod. That Amendment was approved by Commission Order dated February 7, 2003, in Docket No. P-5323,421/IC-02-1566.

7. Immediately thereafter, Eschelon asked Qwest to give it the same UNE-Star rates as those made available to McLeodUSA. Qwest has repeatedly refused to do so unless Eschelon agrees to all other terms and conditions of the Qwest/McLeodUSA Amendment. Engels Letter, Exhibit B-5.

8. Eschelon's Interconnection Agreement provides that Qwest must provide network elements to Eschelon on rates, terms, and conditions no less favorable than those provided to itself or any other party. Exhibit A-1, Part A, Part III, Sec. 37, pp. 28-29.

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<sup>91</sup> At various times and in various documents, the services at issue are referred to as UNE-E and UNE-M, or UNE-Star. Throughout this document, the term UNE-Star will be used to refer to all three.

9. The prices for UNE-Star contained in the McLeodUSA Agreement and Eschelon agreements were exactly the same, despite these other terms and conditions that Qwest now claims are tied to the prices in the amended agreement. The only difference in the rates that is justified is that the equivalent prices for Eschelon should be 35 cents higher than the McLeodUSA rates due to the AIN Amendment. Therefore, Eschelon's UNE-Star rate recurring rate should be \$24.85, compared with the rate of \$24.50 for McLeod and instead of the \$27.35 currently being charged to Eschelon.

10. Section 252(i) of the Act provides that Qwest must provide network elements to Eschelon at the same rates, terms and conditions as it provides it to McLeodUSA. As the FCC stated in the First Report and Order, CC Docket No. 96-98, released August 8, 1996, ¶ 1314 (“First Report”): “In practical terms, this means that a carrier may obtain access to individual elements such as unbundled loops at the same rates, terms, and conditions as contained in any approved agreement.”

Furthermore, the FCC stated:

[W]here an incumbent LEC proposes to treat one carrier differently than another, the incumbent LEC must prove to the state commission that that differential treatment is justified based on the cost to the LEC of providing that element to the carrier.

First Report, ¶ 1317.

11. The rates for UNE-Star are not volume based. If they were the rates originally charged to McLeodUSA and Eschelon for that product would not have been identical. The rates are not tied to the termination date. The termination dates of the McLeodUSA and Eschelon agreements were different in the original agreements, yet the rates were the same. The termination date of the McLeodUSA agreement did not change in the Amendment. The only difference in the services provided is an agreement between Eschelon and Qwest that gives Eschelon the opportunity to order additional features at a flat-rated charge. Eschelon concedes that its rate should be 35 cents higher to reflect that difference.

12. At no time has Qwest requested Commission authority to price UNEs differently based on volumes. The Commission has conducted two exhaustive cost dockets to establish UNE prices, and Qwest did not, at any time during those proceedings, present evidence that volumes purchased should impact price. The Commission never established prices that varied by volume for UNEs including Star.

13. Section 252(i) of the Act and 47 C.F.R. 51.809 of the FCC’s rules require that the price made available to McLeodUSA must be available to Eschelon.

14. Section 252 of the Act requires that Qwest make UNE-Star available to Eschelon at nondiscriminatory rates. Qwest refuses to do so. As a consequence, Qwest has overcharged Eschelon approximately \$4,145 per month for UNE-Star since September of 2002, and is continuing to do so on an ongoing basis. The Commission should require Qwest to charge Eschelon the McLeodUSA UNE-Star rates and order Qwest to refund the amounts overcharged.

**B. ESCHELON IS ENTITLED TO EEL RATES FROM THE TIME OF INSTALLATION OF ITS SPECIAL ACCESS CIRCUITS.**

1. An Enhanced Extended Loop or EEL is a combination of a Loop and dedicated interoffice transport; network elements that Eschelon is entitled to purchase and to combine under its Interconnection Agreement. Exhibit 1-A, Part A, Part III: Unbundled Network Elements.

2. On November 5, 1999 the FCC ruled that EELs must be made available to CLECs at unbundled network element prices. *Third Report and Order*, 15 FCC Rcd at 3909. Paras. 480-81 (citing 47 C.F.R. 51.315(b)). The FCC required that ILECs, upon request, must convert or re-price special access circuits into an EEL.

3. In late 1999 and early 2000, Eschelon wanted to purchase this combination of elements to conduct its business in Minnesota. However, Qwest did not provide a process for Eschelon to order EELs or convert its special access circuits to EELs until October, 2001. Prior to that date Qwest instructed Eschelon to order EELs as special access circuits and required Eschelon to pay tariffed retail rates, as opposed to UNE rates, for this combination of network elements.

4. From March 2000 through October 2001, Eschelon purchased 113 special access circuits from Qwest's Minnesota and FCC Private Line Tariff for use as EEL equivalents.

5. Eschelon initially ordered EELs as special access circuits using an Access Service Request (ASR). When Eschelon objected to paying the retail, as opposed to wholesale, rate for this resold service, Qwest responded that Eschelon was supposed to have ordered these circuits on a Local Service Request (LSR), and that by ordering it using an ASR Eschelon had ordered it as an access service for which no wholesale discount was required. When Eschelon pointed out that no matter what form was used to order it the service was being used to provide EELs, Qwest insisted that it was the form used to order the service that dictated the substance and the price.

6. This position was contradicted by Qwest on March 8, 2001, when Qwest issued a notice stating that the ordering process for EELs had been changed. Qwest acknowledged that the "current ordering method for provisioning of EEL products is done via an Access Service Request (ASR). Qwest has modified systems to now accept conversion and provisioning of EEL's(sic) via the Local Service Request (LSR)." Exhibit B-1.

7. Thus Qwest's own notice acknowledged that EELs were properly ordered on an ASR until March of 2001. Qwest's notice also confirmed that whether an order is processed by use of an ASR or LSR does not define the use or nature of the service. Neither the service, nor the rate changed when the ordering process was changed by Qwest.

8. Qwest claims that it made EELs available in March of 2000. That claim is not valid. While it is true that on March 30, 2000, Eschelon received a notice from Qwest about the availability of EELs (Exhibit B-2).<sup>92</sup> That notice specified that EEL "is only available for new requests (i.e., no conversions of existing services) and is only available if an end user is served out of the following wire centers:" (parenthetical added). It then listed wire centers where EELs were not, in fact, available.<sup>93</sup> Thus, Qwest's announcement specified that existing circuits could not be converted to EELs and that new requests for EELs were only available in certain limited locations. Furthermore, despite this announcement, Qwest continued to instruct Eschelon to order EELs as special access circuits and required Eschelon to pay tariffed as opposed to UNE rates for the combinations.

9. Furthermore, before Qwest would even consider providing EELs, it required that Eschelon enter into an amendment to the Interconnection Agreement even though the ICA provided for such combinations. Thus, Qwest would not honor Eschelon's request unless Eschelon agreed to an unnecessary and one-sided amendment to the Interconnection Agreement. Eschelon refused and demanded its right to EELs under the already existing Agreement and Qwest refused to provide EELs unless a new amendment was signed. Finally, in February 2001, Qwest issued a notice (Exhibit B-3, attached) that conceded that if an existing interconnection agreement contains the elements and rates necessary for the requested combination, no new amendment is necessary. The Qwest notice stated, in part: "...if a Co-Provider's Interconnection Agreement contains access to combinations in general, and the Agreement contains all Unbundled Network Elements and associated rates necessary to make the desired combination, an Amendment is not required." This notice once again contradicted Qwest's previous position.

10. In October of 2001, Eschelon was finally able to order and convert EELs in locations desirable to Eschelon. However, Qwest has refused to reprice the previously ordered special access circuits as EELs and refund the difference between the UNE and tariffed rates.

11. Qwest settled exactly the same issue with MCI WorldCom Network Services (WorldCom) under a Confidential Billing Settlement Agreement dated June 29,

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<sup>92</sup> Although the Notice states that the EEL product is available as of February 17, 2000, the Notice was not sent out until March 30, 2000.

<sup>93</sup> In fact, the Notice was erroneous, the wire centers listed were those in which EELs were not available, as opposed to those in which EELs were available.

2001. Exhibit B-4. As is explained in that Agreement, WorldCom claimed that approximately 2,500 private line circuits provided by Qwest to WorldCom in various states should have been converted to the Unbundled Network Element Platform known as EEL from tariffed services during the time period between September 4, 1997 through the date of the agreement. WorldCom was required to convert its private lines to EELs as part of the agreement and the parties agreed to a payment made by Qwest for past services billed. Eschelon has since also converted its private line circuits in April 2002.

12. Beginning in November of 2001, Eschelon made the request repeatedly to Qwest for a refund of the amounts paid for these circuits but did not received an answer. On February 10, 2003, Eschelon made a request to Patricia A. Engels, Executive Vice President of Wholesale Markets for Qwest. Qwest denied the request. Qwest admitted that the WorldCom agreement includes "a payment and resolution of past disputes regarding the conversion of private line circuits to EELs" but asserted it is not an Interconnection Agreement and therefore is not available for opt-in. Engels Letter (Exhibit B-5) at p. 2.

13. Eschelon has the same basic Interconnection Agreement as WorldCom including the entitlement to combinations like EELs. Qwest agreed to provide WorldCom with a payment as to this issue. Eschelon's identical dispute with Qwest should also result in Qwest's payment of the difference between the price Eschelon paid for these lines and the price it should have paid had Qwest provided Eschelon with combinations (i.e., EELs), as required by the parties' Interconnection Agreements.

14. Eschelon is requesting a refund of \$532,225 for Minnesota, for the difference between Qwest's tariffed rates billed and paid by Eschelon and Eschelon's



Interconnection Agreement rates for elements that make up an EEL. Eschelon has calculated that from March 2000 through April 30, 2002, Eschelon was billed and paid \$839,671.37 for these circuits. Had Eschelon been able to order EELs during this time, it would have only had to pay \$307,445.91, or \$532,225.46 less than it paid.

**C. ESCHELON HAS ATTEMPTED TO RESOLVE THIS ISSUE BEFORE BRINGING THIS MATTER TO THE COMMISSION.**

1. As stated Eschelon has contacted Qwest to ask for the rates in the McLeodUSA Amendment. Qwest has taken the position that Eschelon must take all of the terms and conditions of the McLeodUSA Amendment including volume commitments, termination date and other provisions that are unrelated to price. Exhibits B-5 and B-6, Engels Letters.

2. Eschelon has also requested a refund of the difference between the tariffed rate for special access and the EEL rate from March 1, 2000 to October, 2001. Qwest also rejected that request. Exhibits B-5 and B-6. Engels Letters.

**QWEST'S CONTINUING VIOLATIONS OF LAW**

Qwest's refusal to provide Eschelon UNE-Star at the same rates that the service is provided to McLeodUSA and refusal to refund overcharges for EELs causes significant harm to Eschelon and its customers and injures the development of a competitive marketplace for telecommunication services in Minnesota.

Qwest benefits by charging and retaining higher rates than it is entitled to. Qwest also benefits to the extent that the marketing efforts of Eschelon are generally delayed or impeded due to unreasonable and uncertain prices for capacity for its network.

Qwest's actions with regard to Eschelon, as detailed above, constitute continuing breaches of the Interconnection Agreement approved by this Commission and continuing violations of state and federal law.

As demonstrated above, Qwest has breached its Interconnection Agreement with Eschelon and state and federal law by, among other things:

(1) Failing to provide UNE-Star to Eschelon at the same, non-discriminatory rate that it provides the service to McLeodUSA.

(2) Failing to provide EELs to Eschelon at the Commission approved prices.

Qwest's continuing breaches of the Interconnection Agreement violates Minn. Stat. § 237.121(a)(4) which prohibits Qwest from refusing to provide a service, product, or facility in accordance with its contracts and the MPUC's rules and orders.

Qwest's breaches of the Interconnection Agreement violate the Act, which requires Qwest to provide interconnection on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms of its Interconnection Agreement. 47 U.S.C. §§ 251(c)(2)(C), (D).

Qwest's breaches further violate the Act by constituting a barrier to Eschelon's entry into the local market in Minnesota, prohibited in 47 U.S.C. § 253.

Qwest's conduct, as described above, harms the public interest, because Eschelon's ability to compete is adversely affected, thereby denying end users the traditional benefits of competition.

Notwithstanding the conduct of Qwest described above, Eschelon has fully and in good faith performed all of its duties and obligations under the Interconnection Agreement, the Act and applicable state law.

## REQUEST FOR EXPEDITED HEARING AND THE IMPOSITION OF ADMINISTRATIVE PENALTIES

### **A. AN EXPEDITED PROCEEDING IS NECESSARY.**

The Interconnection Agreement between Qwest and Eschelon recognizes the Commission's continuing jurisdiction to implement and enforce all of the terms and conditions of the Agreement. Exhibit A-1, Section 11.1. Further, the Agreement provides that any dispute arising out of or relating to the Agreement that the Parties themselves cannot resolve, may be submitted to the Commission for resolution. *Id.* The Agreement further provides that the Parties agree to seek expedited resolution by the Commission of any such dispute and shall request that resolution occur in no event later than 60 days from the date of submission of the dispute to the Commission. *Id.*

The Interconnection Agreement provisions in this regard are consistent with Minn. Stat. § 237.462, Subd. 6. That statute provides that the Commission may order an expedited proceeding if the Commission finds it to be in the public interest. In making this determination, the Commission may

consider “any evidence of impairment of the provision of telecommunication service subscribers in the state or impairment of the provision of any service or network element.”

Both under the terms of the Interconnection Agreement and Minnesota Statutes, the Commission should grant an expedited proceeding in this matter. The problems detailed in this Complaint have continued for some time without abatement, with significant harm to Eschelon and Eschelon’s customers. Moreover, delay in resolving disputes of this nature inure to the benefit of the incumbent provider, since each day it can impose pricing uncertainty on Eschelon increases the business risk to Eschelon.

### **RELIEF REQUESTED**

**WHEREFORE**, Eschelon respectfully requests that the Commission:

1. Investigate the issues raised in this Complaint pursuant to Minn. Stat. § 237.081, Subd. 1;
2. Resolve this matter within 60 days in an expedited proceeding, pursuant to the terms of the Interconnection Agreement and Minn. Stat. § 237.462, Subd. 6;
3. Declare that the actions of Qwest detailed above constitute continual violations of its Interconnection Agreement with Eschelon;
4. Declare that the actions of Qwest detailed above constitute continual violations of Minn. Stat. §§ 237.06, 237.121(a)(2) and 237.121(a)(4);
5. Declare that the actions of Qwest detailed above constitute multiple and continual violations of the Act, including 47 U.S.C. 251(c)(2)(D) and (3), and 252 (i) and the relevant rules;
6. Order that Qwest make UNE-Star available to Eschelon at the same rates that it is available to McLeodUSA, back to the date of the date of the McLeodUSA Amendment.
7. Order Qwest to immediately refund to Eschelon the difference between the rate for special access circuits and EELs for all relevant periods.
8. Grant Eschelon any and all relief to which it is entitled under the Interconnection Agreement for Qwest’s breaches of contract;
9. Assess administrative penalties against Qwest for its repeated violations of state and federal law and the Interconnection Agreement, as authorized by Minn. Stat. § 237.462, Subd. 1; and
10. Grant Eschelon such other and further relief as the Commission deems appropriate.

Dated: April \_\_\_\_\_, 2003

Respectfully submitted,

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**Attorneys for Eschelon Telecom of Minnesota, Inc.**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ESCHELON TELECOM OF WASHINGTON, INC.;	)	No. C03-1296R
ESCHELON TELECOM OF ARIZONA, INC.;	)	
ESCHELON TELECOM OF COLORADO, INC.;	)	COMPLAINT
ESCHELON TELECOM OF MINNESOTA, INC.;	)	
ESCHELON TELECOM OF OREGON, INC.;	)	
and	)	
ESCHELON TELECOM OF UTAH, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
QWEST CORPORATION,	)	
	)	
Defendant.	)	

**JURISDICTION AND VENUE**

28. This Court has jurisdiction under 28 U.S.C. § 1332. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and is between citizens of different states. Eschelon Telecom of Washington, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Arizona, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Colorado, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Minnesota, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Oregon, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Eschelon Telecom of Utah, Inc., is incorporated in Minnesota and has its principal place of business in Minnesota. Qwest Corporation (“Qwest”) is incorporated in Delaware and has its principal place of business in Colorado.

29. This Court also has jurisdiction under 28 U.S.C. § 1331. The claims stated herein arise under the laws of the United States, specifically, the Telecommunications Act of 1996, codified in various sections commencing at 47 U.S.C. § 151, *et seq.*

30. The Western District of Washington at Seattle is the proper venue under 28 U.S.C. § 1391. A substantial part of the events or omissions giving rise to the claim occurred in King County, and Qwest is subject to personal jurisdiction in King County.

**PARTIES**

31. Plaintiffs (collectively, “Eschelon”) are competitive local exchange carriers (“CLECs”) that provide local exchange telephone service. Eschelon serves markets in Qwest’s territory in Seattle-Tacoma, Washington; Phoenix, Arizona; Denver-Boulder, Colorado; Minneapolis-St. Paul, Minnesota; Portland-Salem-Eugene, Oregon; and Salt Lake City, Utah. Eschelon is the successor to American Telephone Technology, Inc., Electro-Tel, Inc., Cady Telemanagement, Inc., and Advanced Telecommunications, Inc.

Eschelon provides local exchange telephone service to customers in two primary ways: through Eschelon's telephone network, and through a telephone network owned by an incumbent local exchange carrier (*e.g.*, Qwest), to which Eschelon has or its predecessors had access pursuant to interconnection agreements as required by 47 U.S.C. §§ 251-252. Eschelon has satisfied all prerequisites necessary to bring this action.

32. Qwest is an incumbent local exchange carrier ("ILEC") that, in pertinent part, provides services, equipment, facilities, and network elements to Eschelon and other CLECs pursuant to interconnection agreements, as required by 47 U.S.C. §§ 251-252. Qwest merged with, and is the successor to, U S West, Inc., the parent company of U S West Communications, Inc. ("U S West"). Qwest is liable for the contracts that U S West entered into with Eschelon or Eschelon's predecessors, as described below.

### **FACTS**

#### **The Parties' Interconnection Agreements**

33. In 1999 and 2000, Qwest's and Eschelon's predecessors arbitrated, negotiated or opted into interconnection agreements for every state in which they both do business, namely, Washington, Arizona, Colorado, Minnesota, Oregon, and Utah. These agreements established rates, terms, and conditions for the interconnection of Eschelon's and Qwest's telecommunications networks, as well as for the provision of certain services by Qwest to Eschelon.

34. For Washington, the interconnection agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Arizona, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Colorado, the agreement is the "Interconnection Agreement" between U S West and Electro-Tel, Inc. For Minnesota, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and Cady Telemanagement, Inc. For Oregon, the agreement is the "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and American Telephone Technology, Inc. For Utah, the agreement is "Agreement for Local Wireline Network Interconnection and Service Resale" between U S West and Advanced Telecommunications, Inc. The foregoing contracts are collectively referred to herein as the "Interconnection Agreements."

35. On November 15, 2000, Qwest and Eschelon executed an "Interconnection Agreement Amendment Terms" ("Interconnection Agreement Amendment") that amended the terms of the Interconnection Agreements.

#### **Carrier Access Billing System**

36. Qwest and Eschelon own and operate digital loop carrier facilities and voice switching facilities in the geographic areas in which they do business. As the incumbent local exchange carrier, Qwest is required by federal law to permit Eschelon and other local exchange carriers to interconnect with Qwest's network. Pursuant to the Interconnection Agreements, as amended, Eschelon leases Qwest's distribution and transport network to link Eschelon's customers to Eschelon's switches in order to provide them with telecommunications services. In addition, Eschelon leases combinations of Qwest's distribution plant and Qwest's switching facilities to serve the portion of Eschelon's customers that are not served by Eschelon's switches.

37. Under federal law, local exchange carriers, such as Eschelon, are to be compensated for the cost of transporting and terminating telephone calls that are originated or terminated from or to their customers by customers of other telecommunications carriers. If a caller in New York calls an Eschelon customer in Washington, for example, Eschelon is entitled to collect an access charge from the caller's long distance carrier. Similarly, if an Eschelon customer in Washington calls someone in New York, Eschelon is also entitled to collect an access charge from its customer's long distance carrier.

38. Qwest is one of several long distance carriers from which Eschelon is entitled to collect access charges. Long distance carriers route calls to, and receive calls from, either designated Qwest end office switches (dedicated end office transport), or from access tandems in every geographic area in which Eschelon conducts business. In order to collect access charges, Eschelon must be able to provide long distance carriers with call records of long distance calls, formatted according to industry standards. These records are produced by Eschelon's switches in some instances, and by Qwest's access tandem or local switches or end office switches in others.

39. In the industry, the process by which long distance calls generate records – which are used to collect access charges from long distance carriers – is known as the Carrier Access Billing System

("CABS"). Eschelon's switches generate CABS records for long distance calls *originated* by Eschelon's customers who are served by Eschelon's switches (on-net customers). However, Eschelon must rely on Qwest to provide CABS records of long distance calls *received* by customers who are served by Eschelon's switches (on-net customers), as well as for all long distance calls *made or received* by Eschelon's customers who are served by Qwest's switches using unbundled network element combinations (off-net customers).

40. The underlying Interconnection Agreements for each state (*e.g.*, Section 7 of Attachment 7 of the Interconnection Agreement for Minnesota) and Section 3.3 of the Interconnection Agreement Amendment, require Qwest to provide complete and accurate CABS records for Eschelon's on-net and off-net customers on a daily basis so that Eschelon can bill interexchange or other companies for access charges. Therefore, Qwest is obligated to provide Eschelon with complete and accurate CABS records so that Eschelon can collect the access charges it is entitled to from long distance carriers, including Qwest, for long distance calls pursuant to the Interconnection Agreements and federal law.

41. Qwest has provided Eschelon with some CABS records, but Eschelon has discovered that Qwest has not provided all of the CABS records for Eschelon's on-net and off-net customers. In 2001 and 2002, Eschelon engaged third-party telecommunications consultants to audit the completeness and accuracy of the CABS records provided to Eschelon by Qwest. The audits included test calls to Eschelon customers and test calls from Eschelon customers. In addition, Qwest conducted an audit of its CABS records in cooperation with Eschelon. Based upon the most recent audit, Eschelon found that Qwest's CABS records failed to capture approximately 16% of the total call records for which Eschelon would have been entitled to collect access charges. In addition, Eschelon found that Qwest has not provided complete and accurate CABS records for Qwest-carried long distance toll calls that terminated on Eschelon's on-net lines, an omission that financially benefits Qwest to Eschelon's detriment.

42. Qwest is liable for incidental and consequential damages under the Interconnection Agreements for breaches that are repeated or are found to be a pattern of conduct. Qwest has continually failed to provide Eschelon with complete and accurate CABS records, even after Eschelon raised the issue with Qwest. Qwest's failure to provide Eschelon with complete and accurate CABS records deprives Eschelon of substantial compensation to which Eschelon is entitled. As a result, Eschelon has been unable to bill for and collect approximately \$77,500 per month in access charges, for a total of approximately \$1.2 million from March 2002 through May 2003. The Interconnection Agreements (*e.g.*, Section 4 of Part A of the Interconnection Agreement for Minnesota, and Sections 17-18 of Attachment 7) also require Qwest to pay for Eschelon's audit costs. Eschelon has incurred approximately \$288,000 in auditing costs for the most recent CABS auditing projects. Qwest has refused to pay such costs.

#### Automated Conversion of Eschelon's Resale Customer Base to UNE-E

43. Eschelon has been a wholesale customer of Qwest and its predecessors since 1996. Initially, Eschelon purchased some of Qwest's services under the "Resale" provisions of the Interconnection Agreements. The Interconnection Agreements and federal law also allow Eschelon to provide telecommunications service to its customers through Qwest's unbundled network elements ("UNEs"). UNEs are parts of an ILEC's (*e.g.*, Qwest's) network, such as the loop, switching, and transport functions. Pursuant to 47 U.S.C. § 251(c)(3), ILECs are required to offer UNEs for lease to CLECs. UNEs enable a CLEC to provide telecommunications service to customers who are not served directly by the CLEC's switch and telephone lines.

44. In 2000, Eschelon had a contractual right to convert its base of 49,000 resale lines to a Qwest product known as unbundled network element platform ("UNE-P"), as well as to order UNE-P for new lines. However, Qwest was not prepared to provide Eschelon with the prices, services and quality that Eschelon was entitled to under the UNE-P platform. Instead, Qwest offered to provide the prices, services and quality that Eschelon wanted through a new product (later called UNE-Eschelon or "UNE-E").

45. During the negotiations regarding UNE-E, Eschelon questioned how Qwest intended to convert Eschelon's 49,000 resale lines to UNE-E without disruption in service or functionality. Qwest responded that it could perform an automated (as opposed to manual) conversion process, but Eschelon would have to pay for Qwest to do so. Eschelon agreed. Pursuant to Paragraph 2.1 of the Interconnection Agreement Amendment, Qwest promised to convert Eschelon's base of resale customers to the UNE-E platform and release Eschelon from any termination liability in exchange for Eschelon's payment to Qwest of \$10 million. Of the \$10 million, Eschelon paid \$4 million for Qwest to automatically convert

Eschelon's resale customers to the UNE-E platform and avoid the service disruptions and errors that a manual conversion would cause.

46. In addition to Qwest's promise to prevent service disruptions during the conversion itself, Qwest promised that the conversion would result in accurate bills, so that the bills would no longer reflect the wholesale discount associated with resale service, and would instead show the UNE-E rates in the Interconnection Agreement Amendment. Thus, Qwest was obligated to provide Eschelon with an automated conversion to a working UNE-E product.

47. Despite Qwest's promises to the contrary, Qwest never converted (automatically or otherwise) Eschelon's resale base to an accurately billed UNE-E product. To date, Eschelon has not obtained any benefit from the \$4 million it paid Qwest.

#### Commercially Viable DSL Service

48. CLECs typically provide their customers with high-speed Internet access through digital subscriber lines ("DSL"). Under Section 2.2 of the Interconnection Agreement Amendment, Qwest agreed to make DSL service available to Eschelon's customers through the UNE-E platform, beginning November 15, 2000. After the amendment was signed, Eschelon discovered that Qwest did not have a process in place to provide commercially viable DSL service. As a result, Eschelon was not able to offer or provide its customers with Qwest DSL service until August 2001, despite Qwest's commitment to provide Eschelon with DSL service as of November 15, 2000.

49. Given that numerous Eschelon customers had ordered DSL service from Eschelon, and Qwest was unable to fulfill the orders, Eschelon was required to purchase DSL service from another supplier at substantially higher prices. As a result of Qwest's breach, Eschelon's costs to provide its customers with DSL service was approximately \$1.7 million higher than the costs Eschelon would have incurred otherwise.

### **FIRST CAUSE OF ACTION – BREACH OF CONTRACT (CABS)**

50. Eschelon re-alleges the allegations contained above.

51. Qwest contracted with Eschelon and promised, for valuable consideration, to provide complete and accurate CABS records for long distance calls to and from Eschelon's customers for Eschelon's use in billing long distance carriers for access charges. Eschelon performed its obligations in all material respects. Qwest has engaged in a pattern of conduct that has repeatedly breached the contract by failing to provide Eschelon with the data necessary to bill for such calls. As a proximate result, Eschelon has suffered damages (including incidental damages, consequential damages, and audit costs) in an amount to be proven at trial (but no less than \$1.2 million, from March 2002 through May 2003, plus the \$288,000 in unpaid auditing costs that Eschelon incurred to confirm Qwest's breaches).

### **SECOND CAUSE OF ACTION – BREACH OF CONTRACT (UNE-E)**

52. Eschelon re-alleges the allegations contained above.

53. Qwest contracted with Eschelon, and Eschelon paid Qwest consideration of \$4 million, to automatically convert Eschelon's base of 49,000 resale lines to the UNE-E platform without disruption in service or functionality. Eschelon performed its obligations under the contract in all material respects. Qwest has engaged in a pattern of conduct that repeatedly has breached the contract by failing to provide the automated process, failing to convert Eschelon's resale customer base to the UNE-E platform, and failing to accurately bill Eschelon for UNE-E services. As a proximate result, Eschelon has not obtained the benefit of its bargain and has suffered damages (including incidental and consequential damages) in an amount to be proven at trial (but no less than the \$4 million consideration Eschelon paid Qwest to perform the automatic conversion).

### **THIRD CAUSE OF ACTION – BREACH OF CONTRACT (DSL)**

54. Eschelon re-alleges the allegations contained above.

31. Qwest contracted with Eschelon, for valuable consideration, to make DSL service available for Eschelon to sell to its customers. Eschelon performed its obligations in all material respects. Qwest engaged in a pattern of conduct that repeatedly breached the contract by failing to provide the



promised service. As a proximate result, Eschelon has suffered damages (including incidental and consequential damages) in an amount to be proven at trial but no less than the \$1.7 million in additional costs that Eschelon has incurred to obtain DSL service from a third party).

**PRAYER FOR RELIEF**

WHEREFORE, Eschelon prays for the following relief:

1. For actual, incidental, special, and consequential damages (in an amount to be proven at trial, but for purposes of this pleading, no less than \$7,188,000);
  2. For prejudgment interest;
  3. For all other such relief as the Court deems proper.
- DATED this 16<sup>th</sup> day of June, 2003.

GRAHAM & DUNN PC

By

\_\_\_\_\_  
Edward W. Pettigrew

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Attorneys for Plaintiffs

April 18, 2003

By U.S. mail

Dr. Burl W. Haar  
Executive Secretary  
MN Public Utilities Commission  
121 East Seventh Place, Suite 350  
St. Paul, MN 55101-2147

Re: Request for Investigation and Process for Addressing Time Critical Issues

Dear Dr. Haar:

Eschelon Telecom, Inc. ("Eschelon"), asks the Minnesota Public Utilities Commission ("the Commission") to investigate the nature and extent of improper contacts between Qwest Wholesale and Qwest Retail, as well as other issues raised by a recent example of a customer-affecting conversion gone wrong. Eschelon also asks the Commission to address procedural processes and mechanisms for obtaining regulatory assistance when these time critical issues occur. Fifteen additional copies of this letter are enclosed for your convenience.

**I. Improper Contacts Between Qwest Wholesale and Qwest Retail and Related Issues**

In the example prompting this request,<sup>94</sup> a Minnesota end-user customer signed a Letter of Authorization ("LOA") to switch carriers from Qwest to Eschelon. Eschelon initiated the process to convert the customer, including submitting a Local Service Request ("LSR") with an Eschelon desired due date of April 9, 2003. Qwest's processing of this request involved several errors and examples of improper conduct. Qwest's conduct raises questions that should be investigated, particularly with respect to the frequency with which the problems occur and the steps needed to correct them.

**1. Qwest-caused outage when converting customer to another carrier.**

First, almost *two weeks* before the LSR due date, on March 27, 2003, many of the customer's telephone numbers<sup>95</sup> went out of service. Eschelon later learned that a Qwest wholesale typist made an error in the Qwest service order and brought the lines out of service two weeks early. Qwest has now agreed that it made this error. Naturally, the end user customer was upset about the unexpected outage.

**2. Qwest misinformation about cause of outage.**

Unfortunately, in these situations, it appears to the end user customer that the Competitive Local Exchange Carrier ("CLEC") is to blame, because the outage occurs after a request to switch carriers has been made. It is difficult enough for CLECs to deal with this general misimpression and explain such problems. In this case, Qwest worsened the situation by actually telling the customer that the outage was Eschelon's fault. Qwest told the customer that the service was disconnected at the request of Eschelon without disclosing Qwest's error in processing that request. Qwest had not used the due date that Eschelon requested on the LSR. Instead of admitting this, Qwest created a "he said, she said" situation that frustrated the customer.

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<sup>94</sup> With respect to this example, enclosed are the following Attachments: (1) Eschelon's April 3, 2002 urgent request for assistance; (2) Qwest reject notice; (3) Eschelon's April 17, 2003 email summarizing outstanding issues and attaching Qwest's root cause analysis emails; and (4) Qwest Retail email to Eschelon's end user customer.

<sup>95</sup> The telephone numbers in the affected service orders consisted of two blocks of Direct Inward Dial ("DID") numbers.

Eschelon has also been told that a Qwest Retail representative/agent provided a letter to the customer indicating that the errors were caused by Eschelon. The customer does not want to get caught in the middle of this dispute and may even have been told by Qwest Retail not to share the information with Eschelon. Eschelon has asked Qwest for a copy of any such communication to the customer, but Qwest has not provided a copy.

**3. Qwest rejection of Eschelon's customer-requested cancellation request and processing of Qwest's own cancellation order.**

The end user customer was so upset about the outage that the customer asked Eschelon to cancel the LSR and stop the carrier switch. Eschelon submitted a request to cancel the earlier LSR. Qwest rejected Eschelon's supplemental request to cancel its earlier LSR. The Qwest rejection notice stated that Qwest could not complete Eschelon's cancellation request because Qwest had completed some of its service orders.<sup>96</sup> Despite this Qwest systems limitation, Qwest was telling Eschelon that it needed to cancel the LSR (and associated service orders).<sup>97</sup> Eschelon escalated the issue to obtain cancellation of the remainder of the service orders associated with the LSR. Qwest then told Eschelon that Eschelon's the remaining orders were already cancelled. Only Eschelon can cancel its own LSR/order. Qwest does not have the authority to cancel a CLEC's LSR/order. If Qwest did so, the CLEC could not control its own order process and the choice and timing of cancellation decisions. The problem is particularly serious if Qwest Retail cancelled the Eschelon order, because Qwest Retail should not be involved in the process at this point at all.

**4. Qwest Retail's failure to refer CLEC customer to CLEC.**

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<sup>96</sup> See Att. 2 (reject notice stating: "One or more Service Orders completed. Unable to process cancellation supplemental").

<sup>97</sup> Eschelon submits one LSR for which Qwest may create multiple internal service orders.

It appears that Qwest Retail did cancel Eschelon's remaining orders. The customer told Eschelon that Qwest Retail informed the customer that it cancelled Eschelon's remaining orders but would re-issue the orders if Eschelon did not cancel its LSR per the customer's request.<sup>98</sup> Qwest Retail should not have been handling this issue for a CLEC customer. Qwest has now agreed that Qwest Retail should have referred this customer to Eschelon.

**5. Qwest Wholesale communication to Qwest Retail about CLEC customer.**

Unfortunately, this was not the only Qwest Retail communication with the CLEC customer. The other Qwest Retail communication to the customer resulted from a contact by Qwest Wholesale to Qwest Retail. Qwest Retail then sent an email directly to Eschelon's customer. In the email, the Qwest Retail representative specifically said:

***"I was contacted by our wholesale group. . . ."***

See Att. 4 (emphasis added). It cannot be disputed that the Qwest Wholesale to Qwest Retail communication occurred. All communications about this outage, caused during processing of a CLEC LSR to convert the customer to the CLEC, should have been occurring between Eschelon and Qwest Wholesale at this point. Nonetheless, Qwest Retail proceeded to report on the alleged status of the Eschelon orders to Eschelon's customer. Under no circumstances should Qwest Retail be initiating an email to convey wholesale information about the alleged status of a CLEC LSR directly to the CLEC's

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<sup>98</sup> See also Email from Qwest Retail to Eschelon's customer, discussed below.

end user customer. Qwest Wholesale should have contacted Eschelon, so that Eschelon could have communicated any relevant information to its customer.

When CLECs hear of such Qwest Wholesale-Qwest Retail contacts, or believe based on a course of events that they have occurred, CLECs face a huge uphill battle in attempting to prove the conduct. Rarely are the contacts in writing or, if they are written, the customers do not want to be caught in the middle by providing copies to CLEC. Being able to prove the contact through an email provided to the CLEC is not likely to happen often. An investigation is needed into the circumstances under which such contacts occur and how to prevent them.

**6. Qwest misinformation about Eschelon efforts to comply with customer's cancellation request.**

In the improper Qwest Retail email to Eschelon's customer, Qwest Retail said the Qwest Wholesale group "advised that due to the fact that they have an ASR that has not been canceled by Eschelon that they have to reissue those orders due on 4-09. Eschelon HAS to cancel the ASR with our wholesale group or these orders will process." See Att. 4.<sup>99</sup> This Qwest statement suggests that Eschelon was not acting in good faith to abide by the customer's request and cancel the LSR. This created an impression with the customer that Eschelon was acting against the customer's expressed wishes and further angered the customer. Additionally, Qwest Retail's statement suggests that, if Eschelon does not correct its alleged failure and cancel the LSR, the customer's service will go down AGAIN because Qwest wholesale will have to "reissue" the conversion orders. Such a possibility would naturally deter a customer from switching carriers. In fact, however, as discussed above, Qwest prevented processing of Eschelon's cancellation request first through Qwest system limitations and then by Qwest's own actions in canceling the orders. Qwest's failure to disclose Qwest's role in preventing the Eschelon cancellation from processing mislead the customer. It appeared that Eschelon was not following process and deliberately acting against the customer's wishes, when Eschelon had followed the proper procedure to cancel the LSR.

To make matters worse, Qwest also suggested to the customer that restoring service took longer than necessary because of Eschelon's alleged failure to cancel the LSR. If restoring service took longer than necessary, however, the delay was due to Qwest's initial error in typing the service order incorrectly so that the order was processed two weeks early. When service orders complete, information about the office equipment (located in the switch; known as Line Equipment Number, "LEN") may be reassigned in the Qwest system. When this happens, the LEN is lost for this customer, and a new LEN must be obtained. If a CLEC LSR is canceled before the Qwest service order completes, the LEN is preserved and still available for this customer. If obtaining a new LEN resulted in a delay in restoring service, Qwest caused that delay by erroneously completing service orders long before the requested due date. Qwest's systems

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<sup>99</sup> Qwest Retail erroneously refers to the "LSR" as an "ASR."

and its own cancellation of Eschelon's orders then prevented Eschelon from canceling the LSR. Attempting to explain the interaction of CLEC LSRs and Qwest service orders, including the manner in which LSRs are processed and what happens when service orders complete, to an end user customer is difficult and obviously leads to confusion. The customer simply remembers that Qwest said Eschelon's alleged failure to cancel the LSR caused a delay in restoration of service. This is not the case.

#### **7. Qwest policy of not correcting its misinformation for customer.**

As often happens in the "he said, she said" situation, the end user customer demanded that Eschelon provide a written statement from Qwest stating clearly that Qwest made the error causing the outage and that Eschelon had complied with the customer's wishes. Because Qwest had created doubt about Eschelon's explanation of the problem, the customer would not rely on Eschelon's statement alone and wanted confirmation from Qwest itself. Eschelon requested such a statement from Qwest. Qwest's senior service manager for Eschelon's account told Eschelon, as Qwest has done on other occasions, that Qwest's policy is that Qwest will not provide a written statement to be provided to the customer, even when the purpose of the statement is to correct Qwest misinformation.<sup>100</sup> Eschelon reiterated that it was not asking Qwest to contact the end user customer but wanted a written statement that Eschelon could use to meet the customer's demand. Qwest's senior service manager then said that, in this instance, she would provide a root cause analysis of the issue rather than a statement about cause of the errors.

Qwest's initial root cause analysis was written in a manner so convoluted that no ordinary customer would understand that the end result was an admission of Qwest error. It also did not address all of the issues raised by Eschelon. Since then, Qwest finally provided a more clear statement that the "Qwest SDC issued two orders assigning a due date of March 27, 2003 instead of the Eschelon requested due date of April 9, 2003." See Att. 3 (attaching Qwest email). While it does not refer to an error and does not address other issues, at least Eschelon may finally show the customer a Qwest statement that admits it assigned the wrong date (assuming the customer understands and accepts that "issued two orders assigning a due date" means creating two orders with incorrect dates). The length of time, and the amount of resources, that it has taken to obtain this partial response, however, is unacceptable. Eschelon's provisioning and carrier relations personnel and attorney have spent numerous hours on this issue and have had to make repeated requests to multiple representatives at Qwest about it. Eschelon identified this issue as "urgent" to Qwest on April 3, 2003. Qwest did not provide this response until April 16, 2003 – nearly two weeks later. Two weeks to get this information, particularly when it is needed to correct Qwest misinformation, is too long in a conversion situation. The end user customer's carrier selection is in the balance, and time is of the essence.

#### **8. Qwest's use of Wholesale error as Retail Win-Back opportunity.**

In this case, Eschelon still does not know if the customer will switch to Eschelon. Although the customer previously chose Eschelon and authorized the switch, Qwest's Wholesale and Retail divisions have acted together to change that result. Now, Qwest is using this situation as a win-back opportunity.

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<sup>100</sup> Qwest also attempted to divert the issue by claiming that Eschelon did not have an LOA for this conversion. Eschelon had to provide a copy of the LOA to Qwest to get the discussion back on track. Eschelon informed Qwest that, even assuming there was no LOA (which was NOT the case), other remedies are available to address slamming and related issues. LOA-type issues cannot be used as a license to allow Qwest Wholesale and Retail to engage in improper contacts, Qwest to cancel CLEC orders, Qwest to convey misinformation to the CLEC customer, etc.

The Commission should investigate these issues and the frequency with which they occur. In Minnesota's 271 investigation, the Administrative Law Judge ("ALJ") has already found that AT&T presented credible evidence supporting a finding that individual employees have made *ad hoc* efforts intended to convince customers to remain with Qwest.<sup>101</sup> Eschelon's example provides more recent corroboration that such conduct occurs, even after Qwest has allegedly re-trained its personnel on the rules. This suggests that the behavior is not *ad hoc*. The Commission should determine whether Qwest has a policy (directly or indirectly) of allowing such conduct or otherwise condoning (expressly or implicitly) such conduct. When considering the nature and extent of CLEC examples of such conduct in making this determination, the Commission should consider the evidentiary obstacles faced by CLECs. It is difficult for CLECs to prove and quantify such issues because the communications are usually oral and, by their nature, occur between Qwest and the customer and thus are not visible to CLECs. Regulators have more authority and ability to gain visibility into what is actually occurring within Qwest than CLECs have on their own.

The ALJ indicated that the Federal Communications Commission ("FCC") has found that "the appropriate fora for such allegations are proceedings before state commissions."<sup>102</sup> The Minnesota commission should investigate the issues raised here.

### Regulatory Process for Assistance With Time Critical Issues

Eschelon also asks the Commission to address procedural processes and mechanisms for obtaining regulatory assistance when these time critical issues occur. When examples such as the one described here occur, immediate assistance is needed. A formal complaint has many drawbacks in such a situation. Time and resources are among the largest drawbacks. Also, in this example, Eschelon needed some discrete items immediately to attempt to satisfy the customer, such as a clear statement from Qwest that it made the error that caused the outage and that the information Qwest provided to the customer was erroneous. While the legal ramifications and remedies of the incident may be worked out later in formal complaints, a complaint is not always the best method of addressing such immediate needs.

Eschelon did turn to the Minnesota Department of Commerce ("DOC") for assistance with respect to this situation. Eschelon commends the DOC for its efforts to work with both parties to assist in obtaining needed information. Earlier, when attempting to obtain the information directly from Qwest, Eschelon told Qwest that it would be contacting the DOC and PUC. Eschelon believes that invoking the state agencies assisted in getting the partial answer that Qwest finally provided. More is needed with respect to this particular issue (*see* #2-#7 in Att. 3), and there are the larger implications of this example that should be investigated.

Eschelon would welcome the opportunity to participate in discussions about mechanisms that could be put in place or formalized for regulators to help address such issues. An informal process, based on letters and even oral complaints, already exists for end user customers. Eschelon inquired about that process in this situation but learned that it does not necessarily apply to carrier-to-carrier issues. Perhaps some kind of parallel informal carrier-to-carrier process, with a known point of contact, could be established. Another possibility would be Commissioner or staff intervention. In one situation in which I was involved on behalf of a former client some time ago, Commissioner Scott asked the CLEC and Qwest to meet with him to discuss a conversion that had gone bad. His intervention led to an exchange of information at a level and in a timeframe that CLECs on their own often are not able to obtain, and it hastened bringing the matter to a conclusion. These processes would not replace formal complaints (unless otherwise agreed by the parties) but would provide some means to address the time critical issues earlier. Often, doing so is a function of getting the attention of the right people at the right level to address the issue and provide needed information. Regulators are in a better position to obtain this result than CLECs.

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<sup>101</sup> Findings of Fact, Conclusions of Law and Recommendations, Office of Administrative Hearings, *In re. Commission Investigation into Qwest's Compliance with Section 271(c)(2)(B) of the Telecommunications Act of 1996; Checklist Items 1, 2, 4, 5, 6, 11, 13, and 14*, 7-2500-14486-2, MN PUC Docket No. P-421/CI-01-1371 (Jan. 24, 2003) ("Minnesota ALJ Order") at p. 103, ¶ 345.

<sup>102</sup> *Id.* at p. 103, ¶ 346.

Eschelon encourages the Commission to initiate such discussions. We appreciate your attention to this matter.

Sincerely,

Karen L. Clauson  
Senior Director of Interconnection  
Eschelon Telecom, Inc.  
612.436.6026

cc: J. Jeffery Oxley, Eschelon  
Jason Topp, Qwest  
JoAnn Hanson, Qwest  
Department of Commerce  
Attached Service List





To: Teresa Taylor, Vice President of Wholesale Markets - Qwest

From: Rick Smith, CEO – Eschelon Telecom

Date: August 21, 2003

Re: Recent Service Outages

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I am writing to bring to your attention some very serious service issues. In the last week, Eschelon has endured two network outages that interrupted service to large numbers of Eschelon customers. The D.C. power to our equipment collocated in the Denver Southwest C.O. was disrupted on August 20<sup>th</sup> and the Megacentral DS3 connection (supporting our jointly provided DSL service in MN) was down for over four hours in the middle of the afternoon on Friday, August 17<sup>th</sup>. In both cases, the outages were caused by an interruption of the services provided by Qwest and only Eschelon customers experienced service disruptions. Both outages were beyond the ordinary in severity and impact.

Qwest would never tolerate a technician accidentally (or worse yet, purposefully) removing power from one of its central offices. Yet, in the last three years, Eschelon has suffered this fate on three different occasions, most recently on August 20<sup>th</sup>. This is clearly intolerable.

Neither recent outage was caused by equipment failure or any natural cause. Human interference with our operations is the only possible cause, a conclusion Qwest shares as evidenced by the fact that Qwest personnel directed us to refer one of these incidents to Qwest security.

Perhaps more disturbing than the fact that persons unknown to us are sabotaging our operations is that fact that in both cases the Qwest account service team was unable to either solve the outages or to escalate the issues to personnel who could do so. Nor can the Qwest service team provide any reason, rationale, or root cause for either outage.

Qwest strictly regulates and controls what Eschelon may do within Qwest's premises, but Qwest appears to tolerate negligent or intentional interference with Eschelon's operations which results in outages that Qwest is unable to resolve or explain. This is completely unacceptable. Were Qwest's own customers affected by negligent or willful misconduct, Qwest would surely investigate and take steps to put an end to it. Qwest appears to be operating its network without basic alarm and test capabilities. I say this because Eschelon consistently endures multiple Qwest-related major outages every month. We define a major outage as outage experienced by multiple customers or two or more T1 failures due to a commonly caused network event. Fourteen such failures occurred in February and 11 failures in July. Failures of DS3 circuits, tandem switch problems, and power failures have occurred in the Qwest network throughout our years of operation. Eschelon has network operations too and we understand that network elements go into trouble periodically. However, Eschelon maintains vigilant alarming and test capability on its network to detect and restore trouble before customers are aware of it. I challenge you to explain why the network services provided to Eschelon seem to fail so regularly and why Qwest is unaware of the failure until Eschelon calls.

The attached pages detail each of the most recent failures. I ask you to conduct an internal investigation to determine why such poor service is being delivered to one of your largest wholesale accounts. These "mystery" outages must cease immediately. You should be aware that there have been numerous circumstances over the last three to four years where Eschelon's customers have suffered from outages that

have never been explained. On only one of these occasions has Qwest reported to Eschelon that it had disciplined its employees for willful disruption of Eschelon services. And, even on this occasion, Qwest initially reported the problem "No Trouble Found (NTF)." Similar events have occurred all too often for us not to strongly suspect that some Qwest employees are negligently or intentionally sabotaging Eschelon's operations. We ask that Qwest management undertake a thorough investigation of these recent events. I urge you to take this matter seriously. None of us can tolerate the black-eye that develops when network reliability comes into question.

### **8-20-03 - Wednesday**

#### **Denver Southwest Central Office – DNVERCOSW**

**Power disrupted to Collocation - Approx. 450 analog & IDSL lines impacted**

#### **Duration – 2 hrs.**

09:57 a.m. central - Eschelon loses all visibility to its DLC Collo equipment in this office. Eschelon immediately diagnoses and dispatches a technician to the Denver SW office. Upon arrival at the site Eschelon techs finds that the Bussman GMT fuse covers on the Qwest BDFB serving Eschelon are gone and all circuit breakers (inside our cage) that feed our DLC gear are blown. Although the main fuses in the BDFB were in place, the fuse covers were not in place. Upon resetting the breakers, Eschelon's equipment begins going through its power-up reload procedure. 2 hrs. pass before service is restored due to dispatch time and cold restart time for the Eschelon equipment. The cause of the outage is determined to be a complete loss of both redundant power feeds (A&B) and subsequent current spike related to restoral of power.

Eschelon observed another collocater cage (AT Link) being installed near the Eschelon cage. The fuse positions for AT link are directly above the Eschelon A&B fuse positions on the BDFB. The AT link fuses were placed in a "ready position" in plastic holders (as if ready to do power work). The Eschelon fuse positions are clearly labeled as "Electro-Tel", Eschelon's name at the time that the cage was ordered. See the attached photos.

Given the state of our circuit breakers and the fact that the BDFB main fuse GMT covers were removed, we suspect that someone pulled our fuses and then quickly replaced them. (They pulled Eschelon A & B fuses and then put them back in causing a power spike which tripped all 4 circuit breakers serving our equipment). Removal of both power feeds caused a complete disruption of our service and forced our equipment to go through a cold reboot. Since only Qwest personnel are allowed to access fuses on the BDFB, we can only surmise that a Qwest employee was involved.

The Eschelon tech talked to three Qwest techs who were present in the C.O. when he arrived and all three denied knowing what happened and advised calling Qwest security. Eschelon management has requested a Qwest security investigation via a call to Jean Novak. Eschelon management has since called Qwest security directly as well. Qwest security called back late in the afternoon on 8/20 to advise that they do show a card swipe entry less than 20 minutes prior to our power disruption.

This appears similar to two other incidents that occurred in 2001. At the Bloomington South Central Office in Bloomington, MN (1/9/01). a Qwest tech pulled the wrong fuses and cut off power to the Eschelon Collocation gear as well. To our knowledge that technician was never disciplined. Additionally in the Bellevue, WA (3/15/01) central office, a Qwest tech pulled the active fuses supplying power to our collocation equipment, again resulting in a complete reboot of Eschelon's equipment.

**8-15-03 - Friday**

**Minneapolis Downtown Central Office – Qwest trouble ticket 2459192**

**Megacentral DS3 service is down – Approx. 674 Eschelon ADSL customers out of service in MN.**

**Duration – 4 hrs. 40 min.**

Eschelon resells Qwest DSL. Qwest aggregates all the DSL transport and delivers the DSL customers to Eschelon via a DS3 connection service known as a “Megacentral” in each major Qwest city. This service is ordered through the Qwest Enterprise Group.

Below are the events and calls that took place from 11:17 am CST until facility was fully restored at 15:57 CST. Total outage duration – in excess of 4 hrs. 40 min.

11:17 central - Eschelon personnel notice that multiple customers have called to report that DSL is not working. Eschelon personnel diagnose and determine that no DSL traffic is coming from Qwest on the Megacentral connection. DS3 circuit runs from Qwest downtown Minneapolis C.O. on 5<sup>th</sup> street to the Northstar Bldg. On 7<sup>th</sup> St. (total of 2 blocks).

11:39 central – Eschelon calls Qwest to report outage. Ticket number 2459192 is issued. Qwest was not aware of outage and indicates no alarming on circuit.

11:45 central - Eschelon engaged with Qwest Enterprise group to isolate and repair, Qwest provided no reason for outage at this time.

12:27 central – Eschelon is informed by Qwest Enterprise Group that a Qwest tech had been dispatched to a location not provided to us with no ETA.

12:34 central - Eschelon contacts Jean Novak – Qwest Sr. Svc. Mgr. to escalate as a major service outage. J. Novak has no information. Continued to work issue and call Qwest repair for status, receive little information.

12:52 central – Eschelon communicates to Jean Novak via voice mail we were not getting LOSS OF FRAME – LOSS OF SIGNAL and what appeared to be the trouble was not the DS-3 but the ATM layer of the connection.

13:07 central – Eschelon receives an update from Qwest Repair that a tech was dispatched to CO first and has seen no problem there and is now preparing to go to the North Star Bldg. POP.

13:31 central - Eschelon logged a LOS and LOF (Loss of signal – Loss of frame) and went into yellow alarm. The DS-3 facility appeared to be down hard. This would be expected when work and testing being done at C.O.

13:45 central - Qwest Tech Judy is in fiber room at Northstar Bldg. able to loop Eschelon Equipment and Eschelon cleared. Looping is visible on Eschelon Shasta logs. Judy (Qwest Tech) requested loop from CO and was told that the C.O. techs had not cleared the CO yet and had identified a problem in their MUX at CO and were currently engaged with Nortel to resolve. Judy packed up and left at approx. 14:00.

14:10 central - Eschelon Ops Manager John Ward dispatched to the downtown C.O. to attempt to identify issues and speak to individuals working issue. When he arrived at downtown C.O. he attempted to locate someone working on the trouble with no luck. John visited the Security desk on the main level attempting to locate Qwest CO manager, whom he was told was unavailable. It appeared that no one was working the issue!

14:46 central - Eschelon is told by Jean Novak - Qwest dispatched Tier Two support to work issue on MUX at CO. John Ward left the Qwest central office and returned to Eschelon office

15:36 central - Eschelon contacted Cindy Ohs high cap manager to try to identify what was occurring since not information on progress was forthcoming. Cindy indicated that they had Nortel on line and had un-provisioned and re-provisioned everything and they are now seeing blue alarm toward them and were not able to clear facility and were re-dispatching to North Star because they had Blue alarm.

Eschelon personnel ask if anyone has tried reversing transmit & receive on the facility – Grasping at straws at this point since Qwest was not making any progress. Eschelon techs indicate that they had not done this, but would go down and attempt.

15:57 central - Eschelon techs reversed transmit & receive on the DS3 COAX cable in the Eschelon suite in the Northstar bldg. Immediately the facility came back up.

16:00 central - Eschelon notifies Qwest not to touch the circuit.

Eschelon is concerned that Qwest technicians were back and forth over a 4 hr. period between the downtown C.O. and the Northstar bldg. multiple times and could not clear what appears to be a simple reversal of transmit & receive. This reversal should never have happened in the first place. Additionally Eschelon observed minimal awareness of the problem on the part of Qwest personnel and little interest in resolving it.



August 26, 2003

William Mundell, Commissioner  
Arizona Corporation Commission  
1200 W. Washington Street  
Phoenix, Arizona 85007

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Re: Docket No. T-00000A-97-0238, Qwest's 271 Application

Dear Commissioner Mundell:

I have been advised by the Commission Staff that during the open meeting held August 21, 2003, you asked if anyone knew of any problems that had arisen with Qwest Corporation's ("Qwest") operation support systems ("OSS") in other states since its 271 applications were approved.

MCI's overall mass market (consumer) local exchange carrier ("LEC") reject rate for orders submitted was 15.4% for all Bell operating companies combined for the week ended August 15, 2003. The Qwest reject rate dropped below 30% for the first time that week to 28.4%. The overall small business market LEC reject rate was at 41.3%. The Qwest reject rate for small business orders was 40.7%. Below is a summary of our most recent experiences with Qwest's OSS and OSS documentation that impacts rejection of our orders in Qwest's OSS.

1. Intermediated Access ("IMA") is the method provided by Qwest for CLECs to access Qwest's OSS and process local orders. IMA solely impacts CLECs ordering practices and is not used by Qwest's retail side of its business. The current Change Management Process ("CMP") document lacks sufficient language to require that within specific timeframes Qwest correct software defects when the defect impacts CLECs' abilities to process local service requests ("LSRs"). Without such language, CLECs have no guarantees from Qwest that software defects will be fixed in a timely manner. A defect in the software means the system is not working in accordance with Qwest's published business rules. In turn, when a defect is identified, it is inappropriate for Qwest to simply update the document accordingly because it then places the burden on CLECs to adjust coding they implemented based on the prior documented business rules. In April 2003, MCI initiated a change request through CMP to provide such language that will be subject to a unanimous vote. It is anticipated that Qwest will reject the change request based upon attempts to negotiate a resolution through the CMPO process.

2. Qwest must synch up system edits with those being performed manually by their Interconnect Service Center ("ISC") personnel. Qwest implemented a system

change request that would allow migration order types (UNE-P migrations) to be processed by entering the telephone number and house number only. The intent of the "migrate by TN" change request was that less information would be required on the order than was required prior to the change that would result in less rejects for CLECs. After implementation, MCI saw a significant increase in migration order manual rejects and noted that the ISC personnel were editing more than what was required. A process change was implemented by Qwest after MCI provided examples of the out of synch condition between systems/manual processing of LSRs. A process must be established by Qwest to synch up system and manual edit processing. Qwest has agreed that the process is necessary, but there is no formal commitment to begin.

3. When Qwest implemented what was expected to be Industry Standard "migrate as specified" ordering requirements, it neglected to provide "end-state" view requirements for features that drive blocking and hunting requests. In accordance with a Z-tel change request, Z-Tel requested "the ability to migrate customers as specified without having to list changes to the customer's current feature set." Qwest continues to require a distinction be made between what exists and what is changing for blocking and hunting features.

4. When Qwest system edits are not documented or documented incorrectly, CLEC local orders are either rejected and/or incorrectly provisioned. MCI recently discovered a Qwest back-end system edit that is attempting to validate complete address information that is not required under Qwest published business rules. The edit requires address information be an exact match to what is listed in Qwest PREMIS database and can be retrieved via a preorder service address validation ("SAV") query. Not only are the address fields not supposed to be edited, but CLECs are not and should not be required to perform an SAV preorder query because it increases order processing timeframes. Moreover, an update to documentation would place the burden on CLECs to make system changes to accommodate what should have been documented correctly in the first place.

Another significant issue that can result when documentation is not adequately reflecting how the system is working is requested end user services are not provisioned. Qwest recently determined that blocking features are required to be provided in alphabetical order because that is how the system "expects" blocking features. If blocking features are not provided in alphabetical order, Qwest may only provision those that are provided for in alphabetical order, thus an out of synch condition may exist between what was requested and what Qwest provisioned. At this time the impact of this problem is unknown but Qwest was requested to provide analysis between LSR requests and Service Orders provisioned to determine the impact.

5. Qwest cannot provide to CLECs the most current customer service record ("CSR") because it maintains retail CSRs as "live" until the end user's bill is rendered, paid and posted to Qwest billing system. When a CLEC migrates a local customer, Qwest houses two active customer service records. One with Qwest retail information and one that is generated for the CLEC when the customer migrates. The IMA system

determines which CSR is valid per order by the use of a customer code identifier internally tracked by Qwest. If the CLEC is requested by the end-user to change and/or correct what was provisioned, CLECs must distinguish which CSR is the customers and provide the valid customer code or the order will reject. MCI initiated a change request to eliminate multiple match conditions (SCR102202-01 - Customer Service Record) on October 22, 2002. While Qwest implemented changes to reduce multiple CSR scenarios, it did not address the intent of the original request which referenced the largest impact to CLECs. That is post migration when CLECs are most impacted by multiple CSR conditions 100% of the time until Qwest rendered, billed and posted the retail end user's final bill. Thus, MCI continues to see a large volume of rejects that are a result of multiple match CSR conditions.

A copy of this letter is being docketed and sent to all parties on the service list and being e-mailed to parties as well.

Sincerely yours,

Thomas F. Dixon